



BEFORE THE ARIZONA CORPORATION COMMISSION

0000096002

IN THE MATTER OF THE APPLICATION )  
OF JOHNSON UTILITIES, L.L.C., DBA )  
JOHNSON UTILITIES COMPANY FOR AN )  
INCREASE IN ITS WATER AND )  
WASTEWATER RATES FOR CUSTOMERS )  
WITHIN PINAL COUNTY, ARIZONA. )

DOCKET NO.  
WS-02987A-08-0180

EVIDENTIARY  
HEARING

At: Phoenix, Arizona

Date: April 23, 2009

Filed: April 24, 2009

Arizona Corporation Commission

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(Pages 1 through 159, inclusive.)

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1 BE IT REMEMBERED that the above-entitled and  
2 numbered matter came on regularly to be heard before the  
3 Arizona Corporation Commission, in Hearing Room 100 of  
4 said Commission, 1200 West Washington Street, Phoenix,  
5 Arizona, commencing at 10:00 p.m., on the 23rd day of  
6 April, 2009.

7

8

9 BEFORE: TEENA WOLFE, Administrative Law Judge

10

11 APPEARANCES:

12

13 For the Arizona Corporation Commission Staff:

14 Ms. Nancy Scott and Ms. Ayesha Vohra  
15 Staff Attorneys, Legal Division  
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17 For Johnson Utilities, LLC:

18 SNELL & WILMER  
19 By: Messrs. Jeffrey W. Crockett and Robert Metli  
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21 For Swing First Golf, LLC:

22 CRAIG A. MARKS, PLC  
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1 ALJ WOLFE: Let's go on the record.

2 Good morning and welcome to the Arizona  
3 Corporation Commission. This is the time and place set  
4 for the hearing in the matter of the application of  
5 Johnson Utilities, LLC, dba Johnson Utilities Company, for  
6 an increase in its water and wastewater rates for  
7 customers within Pinal County, Arizona.

8 The Docket No. is WS-02987A-08-0180.

9 My name is Teena Wolfe, and I'm the  
10 administrative law judge assigned to this proceeding.

11 Let's start this morning by taking appearances,  
12 beginning with the applicant.

13 MR. CROCKETT: Good morning Judge Wolfe.  
14 Jeff Crockett and Rob Metli from the law firm of Snell &  
15 Wilmer on behalf of Johnson Utilities, LLC. And seated  
16 with me at the table is Brian Tompsett, who is the  
17 executive vice president of Johnson Utilities.

18 ALJ WOLFE: Thank you.

19 And for Swing First Golf.

20 MR. MARKS: Good morning, Your Honor,  
21 Craig Marks. I'm here on behalf of Swing First Golf, LLC.

22 ALJ WOLFE: Thank you.

23 And the Town of Florence?

24 MR. MANNATO: Good morning, Judge Wolfe. My name  
25 is James E. Mannato on behalf of the Town of Florence.



1 ALJ WOLFE: Thank you.

2 And for RUCO?

3 MR. MARKS: Good morning, Your Honor.

4 Daniel Pozefsky on behalf of RUCO.

5 ALJ WOLFE: Thank you. Good morning.

6 And for Staff?

7 MS. SCOTT: Good morning. Nancy Scott and

8 Ayesha Vohra on behalf of Staff. And with me at the table

9 is Jeffrey Michlik.

10 ALJ WOLFE: Thank you.

11 Are there any members of the public present today

12 who would like to make public comment for the record on

13 the application?

14 (No response.)

15 ALJ WOLFE: Let the record reflect that there are

16 none.

17 This will be the time for opening statements, if

18 the parties have opening statements.

19 Mr. Crockett?

20 MR. CROCKETT: We do, Your Honor. Thank you.

21 Johnson Utilities was formed in 1997 and received

22 the Certificate of Convenience and Necessity in Decision

23 No. 60223 to provide water and wastewater service to

24 Johnson Ranch, a community developed by George Johnson.

25 Johnson Ranch was wildly successful, and the development

1 grew. Johnson utilities has extend its CC&N a number of  
2 times in the last 12 years, and the company's current  
3 service area includes communities between Queen Creek and  
4 Florence. Johnson Utilities' service area consists of  
5 approximately 80 square miles, and the company has grown  
6 rapidly to serve approximately 16,000 water customers and  
7 24,000 wastewater customers.

8 George Johnson, the majority owner of the Johnson  
9 Utilities, is a native of Arizona. Throughout his life  
10 Mr. Johnson has been involved in a number of successful  
11 businesses including produce warehousing, farming,  
12 ranching, real estate development, a health and fitness  
13 club, and the utility business. He has a deep-felt  
14 connection to the state of Arizona and a commitment to  
15 community service.

16 In Pinal County, Mr. Johnson and his construction  
17 company paved 10 miles of Hunt Highway in Pinal County at  
18 no cost to the County. He is donated property for a  
19 school site at Johnson Ranch and paid for construction of  
20 an elementary school on the property. He has donated  
21 generously to charitable organizations in and around Pinal  
22 County, and he is the single largest donor to the Toys for  
23 Tots program in Pinal County.

24 George Johnson and Johnson Utilities share a  
25 passion for sustainable energy. Johnson Utilities is

1 leading by example with the installation of  
2 solar-generating units at its water plant an Anthem at  
3 Merrill Ranch. The company has already installed and is  
4 operating 32 kilowatts of solar power at its Anthem water  
5 plant and is in the process of constructing an additional  
6 1.1 megawatts to run the Anthem wastewater treatment  
7 plant.

8 This is the first rate case filed by Johnson  
9 Utilities. The company's current rates are the initial  
10 rates that were approved nearly 12 years ago in  
11 Decision 60223.

12 Over the years, Johnson Utilities has  
13 successfully endeavored to design, construct and install  
14 utility infrastructure in an economical way while still  
15 maintaining robust state-of-the-art systems. In addition,  
16 the company has sought to keep costs in check by  
17 maintaining a lean and efficient workforce. As a result,  
18 the company is able to propose a decrease of approximately  
19 22 percent in its revenue requirement for the water system  
20 and an increase of approximately 20 percent for the  
21 wastewater system. Customers who receive both services  
22 from Johnson Utilities will generally see a small decrease  
23 in the combination of their water and sewer bills as the  
24 rates are proposed by Johnson Utilities.

25 What are the major areas -- or what are the areas

1 of major disagreement in the case? I'll preview them.

2 First is rate base adjustments. In its original  
3 filing, Johnson Utilities reported water plant-in-service  
4 of \$79,591,151. The company has agreed to certain  
5 adjustments proposed by Staff and RUCO totaling  
6 \$4,750,789, resulting in a revised water plant-in-service  
7 of \$74,840,362. RUCO's proposed adjustment of \$5,254,084  
8 is similar to the company's, but Staff has proposed the  
9 removal of \$19,182,535 in water plant.

10 The lion's share of this reduction comes from two  
11 Staff adjustments: One, an arbitrary and what we believe  
12 is improper 10 percent reduction on all water plants, or  
13 \$7,959,115, because the company did not document plant  
14 costs to Staff's satisfaction; second, an arbitrary and  
15 improper 7.5 percent reductions on all water plant, or  
16 \$5,969,336, to remove affiliate profit.

17 Regarding the 10 percent reductions, the evidence  
18 will show that Johnson Utilities support all but \$885,064  
19 of the \$79,591,151 of water plant. This documentation is  
20 in the form of main extension agreements, contracts,  
21 invoices, cancelled checks, and/or similar items.

22 I would note also that Staff removes plant as not  
23 used and useful and excess capacity and then applies its  
24 arbitrary 10 percent reduction to that plant.

25 Regarding the adjustment for affiliate profit,

1 Staff improperly applies its 7.5 percent reduction to  
2 \$52,743,635 in water plant that was constructed by  
3 non-affiliates. This alone accounts for a reduction of  
4 almost \$4 million. In addition the 7.5 percent reduction  
5 includes overhead, which is an appropriate cost item that  
6 shall not be removed from the affiliated plant  
7 construction cost.

8           The evidence will show that affiliate profits was  
9 only approximately 1.75 percent on the \$26,847,516 of the  
10 affiliate-constructed water plant or approximately  
11 \$469,832, not the \$5,969,336 reduction that Staff proposed  
12 for affiliate profit.

13           Johnson Utilities reported wastewater  
14 plant-in-service of \$126,534,592 in its original filing.  
15 The company has agreed to certain adjustments proposed by  
16 Staff and RUCO totaling \$3,519,540, resulting in a revised  
17 wastewater plant-in-service of \$123,015,052. RUCO  
18 proposed adjustments totaling \$9,547,463, but Staff is  
19 proposing an eye-popping \$33,541,645 reduction in  
20 wastewater plant.

21           Again, the lion's share of this reduction comes  
22 from two Staff adjustments: First, an arbitrary and  
23 improper 10 percent reduction on all wastewater plants,  
24 which totals \$11,896,227, because the company does not  
25 document plant costs to Staff's satisfaction; and second,

1 an arbitrary and improper 7.5 percent reductions on all  
2 wastewater plant, or \$8,922,170, to remove affiliate  
3 profit.

4           Regarding the 10 percent adjustment, the evidence  
5 will show that the Johnson Utilities supported all but  
6 \$1,047,941 of the \$126,534,592 of wastewater plant.  
7 Again, this documentation is comprised of main extension  
8 agreements, contracts, invoices, cancelled checks, and/or  
9 similar items. And again, Staff removes plant as not used  
10 and useful and excess capacity, and then applies its  
11 arbitrary 10 percent reduction to that plant.

12           Regarding the adjustment for affiliate profit,  
13 Staff again improperly applies its 7.5 percent reduction  
14 to \$78,125,195 in wastewater plant that was constructed by  
15 non-affiliates. This alone accounts for a reduction of  
16 \$6 million.

17           As I indicated before, the 7.5 percent reduction  
18 includes overhead, which is an appropriate cost item that  
19 should not be removed from affiliate-constructed plant  
20 costs. The evidence will show that the affiliate profit  
21 was only approximately 1.75 percent on the \$45,724,508 of  
22 affiliate-constructed wastewater plant, or approximately  
23 \$800,179, not \$8,922,170 that Staff removed for affiliate  
24 profit.

25           To put this all in context, Staff has removed

1 \$52,724,180 of the originally filed \$206,125,743 in water  
2 and wastewater plant. This represents more than  
3 25 percent of the company's rate base.

4 In addition, in making its disallowance of  
5 plant-in-service, Staff has refused to remove the  
6 corresponding amounts of advance-in-aid-of-construction  
7 and contribution-in-aid-of-construction, violating the  
8 matching principle of ratemaking. Staff's witness will  
9 testify that the 10 percent reduction for alleging  
10 unsupported plant and the 7.5 percent reduction for  
11 affiliate profit should come out of member equity. This  
12 means that Staff is proposing to reduce merely \$35 million  
13 of member equity where there is only \$25 million of equity  
14 to begin with. In other words, Staff removes more equity  
15 than actually exists.

16 Second area of major disagreement is disallowance  
17 for plant not used and useful. Johnson Utilities, Staff,  
18 and RUCO agree on the removal of \$3,394,895 in water plant  
19 as not used and useful. However, the Company disagrees  
20 with the removal of three plant items.

21 First, the company disputes removal of \$731,125  
22 for a four-mile section of water main constructed to serve  
23 a new development known as Silverado Ranch. Staff asserts  
24 that because this plant is not currently used to provide  
25 water to customers at Silverado Ranch, the plant is not

1 used and useful. However, Staff's focus on whether the  
2 plant is currently being used is misdirected. The proper  
3 inquiry is whether the company's decision to construct the  
4 plant was prudent at the time the decision was made.  
5 Prudently-constructed plant is always used and useful.  
6 The evidence will show that Johnson Utilities' decision to  
7 construct the four-mile water main was prudent.

8           Second, and for the same reasons the company  
9 disputes the removal of \$690,186 for a companion four-mile  
10 section of sewer main that was constructed to serve  
11 Silverado Ranch.

12           Third, the company disputes the removal of  
13 \$1,696,086, which is the cost of constructing the  
14 Precision Wastewater Treatment Plant at Johnson Ranch.  
15 While the Precision plant is not currently treating  
16 wastewater flows, it is certainly used and useful.

17           The testimony in this case will show that in 2002  
18 the Arizona Department of Environmental Quality  
19 implemented new policies requiring that wastewater  
20 treatment capacity be fully constructed and operational  
21 prior to subdivision approvals. As a result, ADEQ ceased  
22 issuing approvals to construct sanitary facilities to  
23 developers within Johnson Ranch and other developments  
24 unless and until Johnson Utilities constructed the  
25 Precision plant.



1           The company constructed the Precision plant in  
2 order to be in compliance with ADEQ, and failure to  
3 construct the plant would have stopped further development  
4 in Johnson Ranch. Thus, the decision to construct the  
5 Precision plant was prudent. Again, prudently-constructed  
6 plant is always used and useful.

7           Third area of disagreement is disallowance for  
8 excess capacity. Johnson Utilities disputes the  
9 recommended removal of water and wastewater plant as  
10 excess capacity. Staff and RUCO have proposed two  
11 disallowances.

12           First is the Anthem at Merrill Ranch well and  
13 storage tank. Staff and RUCO also allege that the Rancho  
14 Sendero Well No. 1 and associated 500,000-gallon storage  
15 tank, which are part of the company's Anthem at Merrill  
16 Ranch water system, are excess capacity, and they remove  
17 \$1,027,065 in costs for these plant items from rate base.  
18 However, the evidence will show that the well and storage  
19 are reasonably necessary to provide water service to  
20 customers during the five-year planning period and that  
21 they are required by ADEQ. Therefore, it would be  
22 inappropriate to exclude the well and storage tank as  
23 excess capacity.

24           The second disallowance for excess capacity is  
25 the San Tan Wastewater Treatment Plant Phase II. Staff

1 and RUCO allege that Phase II of San Tan Wastewater  
2 Treatment Plant is excess capacity, and they remove  
3 \$5,443,062 of wastewater plant. However, the testimony  
4 and evidence will show that Phase II capacity is needed  
5 now and must be put to use later this year to treat  
6 wastewater flows that will be redirected from Johnson  
7 Utilities Pecan Wastewater Plant, which is currently  
8 nearing full capacity. Redirection of wastewater flows  
9 from the Pecan plant to the San Tan plant will allow the  
10 company to delay construction of the third phase of the  
11 Pecan plant. For these reasons it will be inappropriate  
12 to exclude the cost of the Phase II expansion as excess  
13 capacity.

14 Fourth area of disagreement pertains to the  
15 post-test year plant in its rate case application.  
16 Johnson Utilities identified post-test year plant  
17 additions totaling \$2,684,888; however, the company has  
18 since moved \$2,201,886 in plant from post-test year plant  
19 to test year plant because the plant was inadvertently  
20 booked in 2008 when it should have been booked in the 2007  
21 test year.

22 As a result the company's post test year plant  
23 now totals \$1,021,108, which is comprised of the following  
24 two projects: first, the Parks Lift Station at a cost of  
25 \$486,714; and second, the Queen Creek Litchfield at a cost

1 of \$534,394. The testimony and evidence will show that  
2 both of these projects were and are needed to support the  
3 test year level of customers. In fact, if Johnson  
4 Utilities had not made these repairs and upgrades to the  
5 plant, the company could have experienced  
6 service-impacting problems, thus, the post-test year plant  
7 should be included in rate base. RUCO agrees with the  
8 company. Staff does not.

9 Fifth area of disagreement is unexpended hook-up  
10 fees. Both Staff and RUCO include in rate base unexpended  
11 water hook-up fees of \$6,931,078 and unexpended wastewater  
12 hook-up fees of \$16,505. However, the company has  
13 excluded these contributions in aid of construction  
14 because the failure to do so would create a mismatch,  
15 another violation of the matching principle of ratemaking.

16 The CIAC was collected to construct plant which  
17 does not exist today. The testimony and evidence will  
18 show that the hook-up fees are held in a restricted cash  
19 account and that the cash will remain in that account  
20 until the backbone infrastructure for which the hook-up  
21 fees were collected is constructed. As Mr. Bourassa will  
22 testify, including the unexpended hook-up fees in rate  
23 base will unfairly and negatively impact rate base.

24 Sixth area of disagreement is the proposed  
25 elimination of hook-up fees. Staff proposes to eliminate

1 Johnson Utilities' hook-up fees for water and wastewater  
2 backbone infrastructure. However, the testimony and  
3 evidence will show that the current hook-up fees only  
4 cover approximately 40 to 45 percent of the cost of the  
5 backbone infrastructure needed to serve new connections  
6 which pay for hook-up fees. The remaining 55 percent to  
7 60 percent of the cost of the backbone is funded by  
8 equity.

9 Mr. Tompsett and Mr. Bourassa will testify that  
10 the current method of funding backbone infrastructure  
11 through hook-up fees is appropriate for at least two  
12 reasons: First, it ensures that the new development pays  
13 a share of the cost of serving new development instead of  
14 placing that burden on existing customers of the company;  
15 second, it creates equity and certainty by ensuring that  
16 all new development is treated equally. Thus, the company  
17 opposes the elimination of the current hook-up fees.

18 A seventh area of disagreement pertains to the  
19 expensing versus pass-through of the Central Arizona  
20 Groundwater Replenishment District Assessment. I will  
21 refer to that as the CAGRD assessment to save hours of  
22 time in this proceeding.

23 Johnson Utilities proposes to remove \$1,295,865  
24 from expenses for the assessment imposed by CAGRD for the  
25 Company's groundwater replenishment obligation. Instead,

1 the CAGRD assessment will be recovered as direct  
2 pass-through on customer bills.

3 Staff supports the pass-through of the CAGRD  
4 assessment subject to certain conditions. That is a  
5 change from Staff's original position in the case.  
6 Johnson Utilities opposes certain of those conditions, and  
7 that will be discussed by Mr. Tompsett or has been  
8 discussed in his direct -- or his prefiled rejoinder  
9 testimony. RUCO continues to oppose the pass-through of  
10 the CAGRD assessment.

11 Eighth area of disagreement has to do with income  
12 tax expense. Johnson Utilities is organized as a limited  
13 liability company. While a limited liability company is  
14 not itself a taxable entity, the income of a limited  
15 liability company generates a tax liability that must be  
16 paid by its members. For this reason, Johnson Utilities  
17 has included an expense item for income taxes. Subchapter  
18 C corporations include income taxes as an expense item,  
19 and there is no good reason to treat Johnson Utilities  
20 differently simply because the company organized as a  
21 limited liability company.

22 The testimony and evidence will show that a  
23 limited liability company structure provides benefits to  
24 ratepayers especially in the case of a start-up utility  
25 like Johnson Utilities. In addition, Johnson Utilities is

1 contractually obligated to distribute funds to its members  
2 to pay their taxes attributable from income from  
3 operations of the company. Thus, it is appropriate to  
4 allow income tax expense comparable to the income tax  
5 expense of a C corporation in the Company's expenses.

6           Staff and RUCO disagree that tax expense should  
7 be included.

8           With respect to the rate case expense -- I don't  
9 know that that is an area of major disagreement -- Johnson  
10 Utilities, Staff, and RUCO all agree on the amount of rate  
11 case expense, which is \$100,000 for the water division and  
12 \$100,000 for the wastewater division, for a total of  
13 \$200,000. However, while Staff and the Company agree on  
14 the three-year amortization, RUCO is proposing a five-year  
15 amortization. The Company believes that a three-year  
16 amortization is appropriate.

17           Tenth area of disagreement has to do with the  
18 cost of capital. The company's recommended capital  
19 structure consists of 2.8 percent debt and 97.2 percent  
20 member equity. Mr. Bourassa, the Company's witness, is  
21 recommending a cost of equity of 12 percent and a cost of  
22 debt of 8 percent. Based on the recommended 12 percent  
23 cost of equity, the Company's weighted average cost of  
24 capital is 11.89 percent.

25           Mr. Bourassa also recommends that the weighted

1 average cost of capital be used as the rate of return and  
2 apply to the Company's fair value rate base to compute the  
3 Company's required operating income.

4 Because Staff is recommending negative rate bases  
5 for both the water and wastewater divisions, Staff has not  
6 provided a cost of capital analysis and is recommending an  
7 operating margin of 10 percent.

8 RUCO has recommended cost of equity of  
9 8.31 percent and cost of debt of 8 percent based on the  
10 company's existing debt cost. RUCO imposes a hypothetical  
11 capital structure of 40 percent debt and 60 percent equity  
12 based on hypothetical capital structure. RUCO computes a  
13 weighted average cost of capital of 8.18 percent, which is  
14 RUCO's recommended rate of return on fair value rate base.  
15 The company believes that its proposed weighted average  
16 cost of capital of 1.89 percent is the appropriate figure  
17 to be used in this case.

18 What do the parties agree on? I don't know that  
19 I will spend a lot of time on these issues. There are a  
20 number of areas of agreement. They have agreed on certain  
21 areas of plant reclassification subject to one  
22 disagreement over an approximately \$378,000, which we are  
23 still working on addressing even this morning as we were  
24 coming into the hearing.

25 Depreciation expense, the parties agree on the

1 depreciation rates.

2           The respective parties' depreciation adjustments  
3 will, of course, depend on the parties' adjustment to  
4 revenue, which remains in dispute at this time.

5           Johnson Utilities has accepted Staff's reductions  
6 of \$348,852 for materials and supplies for the water  
7 division. So the parties are in agreement on that issue.

8           Johnson Utilities has accepted Staff's reductions  
9 of \$633,537 for the water division and \$986,826 for the  
10 wastewater division for deferred assets. So the parties  
11 are in agreement on that issue.

12           The parties agree that there shall be no  
13 allowance for cash working capital.

14           The parties agree to an adjustment on effluent  
15 revenue in the amount of \$65,361, which is addressed in  
16 the testimony.

17           The parties agree on the adjustment to sludge  
18 removal expense to remove \$7,688 for expenses that were  
19 paid outside of the test year. However, Johnson Utilities  
20 is requesting the inclusion of 31,488 additional dollars  
21 for sludge removal expense that were paid during the test  
22 year but were inadvertently omitted from the Company's  
23 original filing.

24           The parties agree on outside service expense.

25           The parties agree on miscellaneous expense.



1           The parties agree on the Arizona Department of  
2 Revenue methodology to compute property tax. The  
3 difference in the parties' property tax numbers relate to  
4 the revenue requirement that the parties are recommending.

5           And the parties agree on water testing expense.

6           Finally, let me say a few words about Intervenor  
7 Swing First Golf. As Your Honor is aware, Johnson  
8 Utilities and Swing First Golf have a dispute over the  
9 proper amount of bills for effluent and Central Arizona  
10 Project water supplied by the Company to Swing First Golf  
11 Course in Pinal County as well as other issues regarding  
12 delivery of effluent.

13           Although the Company and Swing First Golf have  
14 had many discussions and meetings to resolve the dispute,  
15 there has been no resolution to date. Swing First Golf  
16 has filed a formal complaint in Docket WS-02987A-08-0049,  
17 and the billing and other issues raised by Swing First  
18 Golf will be addressed in that docket, which is the  
19 appropriate docket to resolve these customers-specific  
20 issues.

21           The testimony and evidence in this case will show  
22 that Johnson Utilities has a very good record with respect  
23 to customer complaints and customer service.

24           Thank you, Your Honor.

25           ALJ WOLFE: Mr. Marks.

1 MR. MARKS: Thank you, Your Honor.

2 For the record, again, my name is Craig Marks,  
3 and I represent Swing First Golf, LLC, and intervenor in  
4 this case.

5 Now, some of you know me better than others, and  
6 those that know me well also know that I typically  
7 represent utilities at the Commission. But you may not  
8 know that I have been representing utilities for most of  
9 my 27-year legal career. In fact, for 17 of those years I  
10 had the privilege of being an in-house attorney for three  
11 different utilities, and I have also represented and  
12 worked closely with many of the utilities from Hawaii to  
13 Vermont and points in between.

14 Why do I bring this up? I know utilities. It  
15 would be fair to say that I love utilities. I know what a  
16 tough job it is to generate and deliver electricity, to  
17 receive and deliver natural gas, to produce and deliver  
18 water, and to collect and treat wastewater. I know just  
19 how dedicated the men and women of utilities are. They  
20 take their public service obligation very seriously. I  
21 have sat with executives and watched them struggle with  
22 financial and regulatory issues or how to respond to a  
23 natural disaster. I know that utility employees in turn  
24 are not as well paid as many of their peers in other more  
25 glamorous industries, but I doubt that many of their peers

1 have the same satisfaction at the end of day that they  
2 have safely and reliably performed a precious public  
3 service.

4 I also know that despite all of their dedication  
5 and hard work, utilities are unfortunately not loved by  
6 the public. This is a fact of life. The huge investments  
7 in the daily comments from each employee are hidden from  
8 view. The typical customer takes the remarkable service  
9 for granted. The utility to them is just another annoying  
10 bill to pay at the end of the month.

11 This is why I'm so outraged when a utility  
12 betrays its public-service obligation. It contributes to  
13 the public stereotype that utilities are unfeeling  
14 monopolies concerned only with money, that don't care  
15 about their customer, the environment, or the law. That  
16 is why when a utility has betrayed its public-service  
17 obligations, I am leading the course calling for the  
18 Commission to take action.

19 Johnson Utilities has betrayed its public-service  
20 obligation. At the same time Johnson Utilities is here  
21 with its hat in its hand asking the Commission to raise  
22 rates. The Commission now has the opportunity in this  
23 docket to appropriately deal with this company.

24 Now, I suspect fully that you will hear  
25 Mr. Crockett object time and time again that the

1 Commission cannot consider in a rate case Johnson  
2 Utilities' environmental violations. I suspect you will  
3 hear Mr. Crockett also say that the Commission cannot  
4 consider Johnson's abuse of its customers as part of its  
5 consideration. Mr. Crockett will also likely object to  
6 the Commission considering George Johnson's history of  
7 environmental violations even though that same  
8 George Johnson owns and runs Johnson Utilities, which has  
9 continued to run up one environmental violation after  
10 another.

11 Now, Mr. Crockett will just be doing his job, but  
12 he will be wrong. Ratemaking is more than a formula where  
13 the Commission can only determine the inputs and the  
14 formula spits out required rates. This Commission is  
15 constitutionally required to consider the public interest  
16 when it sets rates.

17 A court held a rate should be allowed the company  
18 whose property is committed to public service to earn a  
19 fair and reasonable reward while also being reasonable  
20 from the standpoint of public interest. And that's *City*  
21 *of Tucson versus Citizens Utilities Water Company*, 17  
22 *Arizona Appellate* 477, 1972, at page 480.

23 And Supreme Court held the Commission in  
24 exercising its ratemaking power of necessity has a range  
25 of legislative discretion, and that is *Simms versus Round*

1 Valley Light and Power Co., 80 Arizona 145 at page 154,  
2 1956.

3 Now, Your Honor, as an attorney who normally  
4 represents utilities, I have often wished this  
5 Commission's jurisdiction was not so broad. I have even  
6 argued before you, in fact, that the Commission should not  
7 look into a particular issue in a rate case; however,  
8 subject to very differential court review, it is the  
9 Commission that determines whether to consider a  
10 particular issue when determining a just and reasonable  
11 rate.

12 I can give two recent examples. In  
13 Arizona-American Water's recent Sun City West Water  
14 case -- Wastewater case -- and that was Docket  
15 WS-01303A-06-0491, and that resulted in Decision  
16 No. 70209 -- the Commission considered an unfortunate  
17 situation where two meter readers were caught making up  
18 meter readings or a practice called curb readings. The  
19 Commission Staff hired an expert to independently evaluate  
20 the situation and to make recommendations to the  
21 Commission.

22 During the hearing the commissioners heard and  
23 evaluated testimony from Arizona-American and Staff's  
24 expert and ultimately ordered a series of remedies,  
25 including customer refunds.

1           Now, of particular relevance, this was a  
2   wastewater case, but the issue that the Commission  
3   considered and ruled on had nothing directly to do with  
4   wastewater service. These were water meter readers  
5   working for an affiliate, and the resulting misbills were  
6   for water companies. However, as part of the wastewater  
7   case the company still evaluated the incident. They  
8   considered Arizona-American's proactive response to the  
9   incident and Arizona-American high degree of cooperation  
10   with the investigation and then they ordered appropriate  
11   remedies. I believe there were 14 particular conditions  
12   that the company was required to comply with.

13           A second example is Arizona-American's recent  
14   Anthem Water and Wastewater rate case, Docket  
15   WS-01303A-06-0403, and that resulted in Decision  
16   No. 70372.

17           As I'm sure you will recall, Judge Wolfe, many  
18   days of hearing were devoted to just what information was  
19   disclosed to Anthem homebuyers concerning potential future  
20   rate increases. Now, there is no way that this fits into  
21   the ratemaking formula, but the Commission believed that  
22   the investigation was necessary as part of its ratemaking  
23   function.

24           Now, Swing First Golf, Your Honor, is, among  
25   other things, an irrigation customer of Johnson Utilities.

1 And Swing First will present two witnesses, Mr. David  
2 Ashton, Swing First's managing member, who will discuss  
3 some particularly egregious conduct by Utility directed at  
4 Swing First as a customer, at other customers and  
5 personally at Mr. Ashton and his family.

6 Swing First and Mr. Johnson were partners in a  
7 business deal. After Swing First broke off the business  
8 relationship, Mr. Johnson causes this utility to take the  
9 following actions: Utility reversed \$50,000 water credit  
10 that it previously had provided; Utility stopped  
11 effectively delivering treated effluent to Swing First for  
12 almost one year until Swing First filed a complaint with  
13 the Commission. Instead of delivering effluent, Utility  
14 delivered CAP water to Swing First and then billed Swing  
15 First almost five times the lawful rate for that CAP  
16 water.

17 During that same time period Utility almost never  
18 read Swing First meters, so as a result of all of these  
19 gross overbillings, Utility fabricated a huge past-due  
20 balance for Swing First and then used that phony past-due  
21 balance as a pretense to cut off Swing First irrigation  
22 service. They ignored the Commission's notice  
23 requirements, and they twice cut off the water irrigation  
24 service. And only after the Commission got involved did  
25 Utility restore Swing First's service. Only after the

1 Commission got involved did Utility provide some, but not  
2 all, required bill credits to Swing First. So Utility was  
3 awarded by the Commission from taking further punitive  
4 action, and so it instead went to court in attempt to  
5 collect this phony past-due balance.

6 Now, during the same time period Utility was also  
7 selling the San Tan Heights Homeowners Association treated  
8 effluent. And the tariff rate for treated effluent, Your  
9 Honor, is 62 cents per 1,000 gallons. The Utility was  
10 charging the homeowner association \$3.75 per 1,000  
11 gallons, or over six times the tariff rate.

12 The Homeowners Association asked Mr. Ashton to  
13 review the bills, after which Mr. Ashton concluded in an  
14 e-mail that it appeared the utility was defrauding the  
15 homeowners association by charging six times the tariff  
16 rate.

17 After it got caught, Utility finally issued bill  
18 credits to the San Tan Heights Homeowners Association but  
19 then sued Mr. Ashton for defamation for discussing the  
20 issue with the homeowner association. And the complaint  
21 also added Ashton's wife as one of the defendants.

22 Now, since Mr. Ashton filed his complaint, the  
23 Utility has generally delivered sufficient treated  
24 effluent to allow Swing First to irrigate the golf course  
25 entirely with effluent; however, the harassment has



1 continued.

2 Swing First filed its formal complaint at the end  
3 of January. Utility received that complaint on  
4 February 1st. Utility began immediately over-delivering  
5 effluent to the golf course to the point where it flooded  
6 the golf course. Water covered a good portion of the 18th  
7 fairway and neighboring areas, and Swing First asked,  
8 begged the utility to stop sending effluent. And Utility  
9 refused and continued to send effluent for many days, and  
10 this was during a rainy time when no effluent was required  
11 at all. And, of course, Utility billed Swing First for  
12 these effluent deliveries.

13 Twice in 2008 there were mysterious line breaks  
14 that prevented Utility from delivering treated effluent at  
15 times of peak demand. This caused Swing First to purchase  
16 more expensive CAP water or the alternative was the golf  
17 course would dry up.

18 In February of 2009 George Johnson and Utility  
19 sent a letter to Swing First members, which was clearly  
20 intended to intimidate them from supporting Swing First's  
21 participation in this case and in Swing First's complaint  
22 case against Utility. Utility's letter also attacked  
23 Mr. Ashton personally, and attempted to destroy his  
24 business relationship with the other Swing First member.

25 Swing First policy witness will be

1 Ms. Sonn Rowell. She make nine recommendations to the  
2 Commission based on public information as well as  
3 Mr. Ashton's testimony. In addition to the egregious  
4 conduct that Mr. Ashton brings to light, she bases her  
5 recommendations on the following information about  
6 Mr. Johnson and his utility.

7 First, Mr. George Johnson is Utilities majority  
8 owner and its ultimate decision maker.

9 In 2007 Mr. Johnson and his companies paid the  
10 largest civil environmental settlement in Arizona history.

11 In 2008 Mr. Johnson and his companies paid one of  
12 the largest settlements in federal history for bulldozing  
13 the San Juan River.

14 In 2008 Utility discharged raw sewage into a  
15 neighborhood wash behind the Pecan Creek North  
16 subdivision. Residents were justifiably frightened and  
17 concerned. They organized a protest, and they spoke to  
18 the media. What Utility has not brought to the  
19 Commission's attention is that it has sued five concerned  
20 customers for defamation because of the protest and  
21 because of comments made to TV reporters. Clearly  
22 Utilities' lawsuits are intended to silence these  
23 protesters and to intimidate further protests.

24 In 2008 Utility was caught illegally storing  
25 dangerous sewage sludge at a treatment plant. This matter

1 is now the subject of three -- count them -- three open  
2 notices of violation from the Arizona Department of  
3 Environmental Quality. And its 2008 environmental  
4 infractions were nothing new. ADEQ and ADWR have  
5 previously imposed significant fines on Utility.

6 Utility also has knowingly and illegally charged  
7 its customer for what it puts on its bills or what it  
8 calls on its bills as a Superfund tax.

9 Utility also seems to have delayed this rate  
10 filing so it could continue overcharging its customers by  
11 millions of dollars per year. In Decision No. 68235,  
12 dated October 25, 2005, the Commission ordered Utility to  
13 file a rate case for its water and wastewater divisions by  
14 May 1, 2007, using a 2006 test year. The Commission has  
15 never altered this requirement despite repeated requests  
16 from Utility. However, Utility delayed this filing until  
17 March 31, 2008, using a 2007 test year.

18 Now, it's certain as a result of this case  
19 Utility will be ordered to reduce its water rates and it  
20 now seems likely based on Staff and RUCO's testimony that  
21 Utility will be ordered to reduce its wastewater rates.  
22 As a result of Utility's unauthorized delay, it appears  
23 that these rate reductions will occur one year later than  
24 they should have.

25 The Commission needs to deal harshly with

1 Utility's blatant disregard for its customer, public  
2 safety, the environment, and its public-service  
3 obligation.

4           Ms. Rowell recommends that the Commission take  
5 the following actions: Utility should not be allowed to  
6 increase its rates until its books and management  
7 practices have been thoroughly investigated; Utility  
8 should be required to immediately at end of this phase of  
9 the case reduce its water rates and wastewater rates if  
10 appropriate and make refunds going back one year for the  
11 difference between the rates that it charged during the  
12 year it delayed and the rates that are ultimately approved  
13 in this case; Utility should also be required to refund  
14 its illegal Superfund tax collections; because of  
15 continuing problems at the Pecan Wastewater Treatment  
16 Plant, that plant should not be included in rate base;  
17 Utility should be required to dismiss all pending  
18 defamation lawsuits against its customers and to pay all  
19 their court costs and legal fees; Utility should be fined  
20 for its blatant disregard of its public-service  
21 obligations, environmental laws, and explicit Commission  
22 orders; Utility should also be penalized for the reduced  
23 rate of return on equity, and by that the Commission will  
24 determine the appropriate rate of return on equity, all  
25 other things being equal, and then subtract an appropriate

1 number of basis points to penalize the Utility for its  
2 activities; following completion of an independent  
3 management and financial audit, the Commission should  
4 require Utility to show cause why it should not surrender  
5 its certificate of convenience and necessity and have a  
6 manager appointed to run the utility.

7 Finally, Ms. Rowell recommends that the  
8 Commission should bifurcate this case into two phases.  
9 The first phase would determine rates and the amount of  
10 any required refunds; the second phase would be the  
11 show-cause phase, which would also determine whether fines  
12 should be paid.

13 Now, Utility will argue that the Commission does  
14 not have the authority to take these actions or that they  
15 are unprecedented. Swing First replies that the Utility's  
16 actions are also unprecedented and the remedies for this  
17 egregious history are warranted and are well within the  
18 Commission's constitutional authority.

19 Thank you, Your Honor, for hearing our opening  
20 remarks and I look forward to presenting our case.

21 ALJ WOLFE: Thank you.

22 Mr. Mannato? Could you pull the mike over to you  
23 and make sure it's on because there may be people  
24 listening in on the listen line.

25 MR. MANNATO: Your Honor, I was asked to

1 intervene in this proceeding on behalf of the Town of  
2 Florence and to appear here today by the mayor and the  
3 Town Council. And I think the reason for that is because  
4 they have a concern about the outcome of this proceeding.

5 I will hearken back to something that  
6 Mr. Crockett said earlier in this opening statement. He  
7 described some of the charitable and public-service things  
8 that Mr. Johnson has done, and I think that the Town would  
9 agree that the Town has been a beneficiary. From time to  
10 time of Mr. Johnson's charitable interest in things  
11 pertain to the Town of Florence.

12 And so we do not really come here today for the  
13 purpose of impugning Mr. Johnson in any way; however, as I  
14 say, the Town does have a concern about the outcome of  
15 this proceeding.

16 As you probably saw from the motion to intervene  
17 which I filed, the Town is a designated municipal water  
18 provider and provider of wastewater treatment. The Town  
19 has long been that. I believe the Town began providing  
20 treatment services and water services to its residents in  
21 the 1950s. So we are not new to the business of providing  
22 these types of services.

23 What you will probably learn is that Johnson  
24 Utilities Company is also now a provider of water and  
25 wastewater services within the Town of Florence pursuant

1 to an operating agreement or a franchise, if you will,  
2 that was agreed upon by the Town and Mr. Johnson.

3 I think in a perfect world it would be the Town's  
4 desire that all of its residents would pay the same amount  
5 for the service of potable water and wastewater treatment.  
6 Currently they do not.

7 The problem is not really complicated, and what  
8 it boils down to, Your Honor, is that the Town simply does  
9 not have the ability to provide service to the entire  
10 town.

11 ALJ WOLFE: Is that mike on? Is the light on?

12 MR. MANNATO: Yes, it is.

13 ALJ WOLFE: Okay. Thank you.

14 MR. MANNATO: We do not have the technical or  
15 maybe perhaps not even the financial ability at this time  
16 to provide service to all the residents in the town. So  
17 what you are hear is that Johnson Utilities is currently  
18 the water and wastewater provider to the entire Anthem  
19 community, which has developed within the town of  
20 Florence. Currently that amounts to about 1200 homes.  
21 Some day the Anthem community may consist of over 11,000  
22 homes.

23 Johnson Utilities, I believe, has also agreed to  
24 provide service to several other planned developments,  
25 which are within the current limits of the town of

1 Florence. And I think some day those planned developments  
2 will consist of over 25,000 homes.

3 So Johnson Utilities in the future is going to  
4 play a very large role in the provision of water and  
5 wastewater service to the residents of the town of  
6 Florence, and that is one of the reasons why the Council  
7 is concerned about the outcome of this proceeding.

8 The core problem is that currently the cost of  
9 service if the Town of Florence is your provider is much  
10 lower than if Johnson Utilities is your provider. And I  
11 think the issue is how can that problem, if not be  
12 completely solved, how can it at least be ameliorated to  
13 some extent?

14 The difference in the rates, I think, is due to  
15 two things. One is that the Town uses a different rate  
16 methodology than that that is employed by Johnson  
17 Utilities. And the second is that essentially when it  
18 comes to providing these services, the Town operates more  
19 or less in a nonprofit manner, almost in the manner of a  
20 nonprofit company.

21 The rate methodology that was adopted by the  
22 Town, I think, has really one goal, which is really to  
23 ensure that the amount paid by each user is commensurate  
24 with the burden that they place on the system. And so  
25 what the Town has tried to do is, no matter what the class



1 of rates is or no matter what the class the customer is,  
2 is to try to set a rate that will ensure that they are  
3 paying their fair share or it reflects the burden that  
4 they place upon the cost of providing service to them, in  
5 that way to provide fairness to all of the customers.

6 The Town understands that Johnson Utilities must  
7 be allowed to make a reasonable profit on the provision of  
8 services. We understand that. We acknowledge it, and we  
9 do not have any problem with that notion.

10 On the other side of the coin, if you look at the  
11 public comments that were docketed in this matter, I think  
12 you will see that approximately 80 of the signatures  
13 provided to the Commission came from people that are  
14 residents of the town of Florence. The comments seem to  
15 have one theme, which is that they feel that they are  
16 paying too much for service from the Johnson Utilities  
17 company.

18 Fundamentally, the Town's interest, as I said  
19 earlier, is simply because of its strong interest in  
20 ensuring that all of its residents are charged reasonable  
21 and equitable rates for service. That is our only concern  
22 here. And I think that the problem is one which is not  
23 easily addressed, but I believe that the mechanism for  
24 adjusting it has been set up in this proceeding. And we  
25 also believe that the answers of how to find a solution to

1 this problem will be presented to you over the next  
2 several days.

3 Thank you.

4 ALJ WOLFE: Thank you.

5 Mr. Pozefsky?

6 MR. MARKS: Again, good morning, Your Honor. My  
7 name is Dan Pozefsky, and I represent RUCO.

8 Johnson Utilities is requesting that the  
9 Commission allow over \$7.3 million of contributions in aid  
10 of construction, CIAC, for the water and wastewater  
11 district in rate base. CIAC, like advances in aid of  
12 construction, IACC, are treated as a reduction to rate  
13 base. The contributions in question are unexpended  
14 hook-up fees paid by the developer for plant and  
15 infrastructure that will be built to serve future  
16 customers. The evidence will show that the developer has  
17 since experienced financial difficulties and the company  
18 is currently sitting on moneys.

19 The company claims that it collects the hook-up  
20 fees in advance of providing the service, and since the  
21 customer who is credited with a hook-up fee is not on the  
22 system nor the plant to serve them constructed, the  
23 inclusion of CIAC would result in a mismatch and  
24 consequently a windfall.

25 There is nothing unique about the hook-up fees

1 here that warrant special ratemaking consideration. The  
2 company has continued to accept the contributions knowing  
3 that the normal ratemaking treatment is to reduce rate  
4 base. There may be mismatches that work against the  
5 shareholders here, but if that is the company's concern,  
6 its other recommendation should be consistent.

7 For example, it should not be requesting the  
8 recovery for the post-test year plant costs associated  
9 with the Parks Lift Station and the Queen Creek Litchfield  
10 Project because it is likely that the resulting mismatches  
11 will work to the shareholder's benefit.

12 The company is also requesting the recovery of  
13 income expenses. This request is without merit. The  
14 company is a limited liability corporation, and as such  
15 its earnings and losses are assigned to individual  
16 shareholders who report the same on their individual  
17 income tax.

18 As the evidence will show, the benefit to the  
19 company's shareholders is that they do not pay double  
20 taxation. The company, when it was organized, was well  
21 aware of the benefits of the different types of corporate  
22 status. It chose the limited liability status and is now  
23 attempting to capitalize on the regulatory benefits to its  
24 shareholders associated with a C corporation, i.e., to  
25 recover income tax expense.

1           The company's claim that it should still be able  
2 to recover income tax expense because it has agreed to  
3 reimburse its shareholders for the taxes that they have to  
4 pay is, with all due respect to the company, a weak  
5 argument and should be given no weight.

6           Another choice that the company made was to  
7 become a member of the Central Arizona Groundwater  
8 Replenishment District, also known, as we have heard  
9 before, as the CAGRD. This choice is made in order to  
10 obtain a certificate of assured water supply, which is  
11 required by state law. This requirement applies to those  
12 entities that sell subdividing land. In other words, it  
13 does not apply to all the water utilities, and only the  
14 developer utilities, like Johnson. There is a cost  
15 associated with membership, which the company's attempt in  
16 the past was a tax to ratepayers here.

17           While the public policy for the CAGRD is good,  
18 there clearly is a question as to how ratepayers benefit  
19 by the cost. In other words, the only reason, the  
20 customers are being required to pay for this is because  
21 the Utility sells subdivided land that it profits from.

22           The company proposes that this cost be considered  
23 a tax and pass through to ratepayers each year. In 2002  
24 the company asked the Commission for clarification of the  
25 collection costs on the CAGRD for ratemaking purposes. As

1 the evidence will further show, the Commission in Decision  
2 No. 64598 stated that these costs could not be treated as  
3 a pass-through tax within the Commission rules. Nothing  
4 has changed, and the Commission was correct.

5 RUCO's recommendation is based on the  
6 Commission's decision. RUCO is recommending that the cost  
7 be expense, and it's even proposed that the company  
8 collect under the 2008, 2009, and 2010 rates, which are  
9 now known and measurable.

10 One last point on this. Staff has recommended  
11 that the company collect the fees associated with the  
12 CAGR by what appears to be an adjustor mechanism. RUCO  
13 believes adjustor mechanisms are exceptions to the fair  
14 value requirement and are to be used very sparingly. RUCO  
15 disagrees that this issue raises to a level of the use of  
16 an adjustor mechanism.

17 RUCO is recommending a positive rate base for the  
18 company's wastewater division and is therefore  
19 recommending a cost of capital. RUCO's recommended cost  
20 of equity for the wastewater division is 8.31 percent  
21 compared to the company's recommendation of 12.0 percent.

22 As the evidence will show, the company's  
23 recommendation increased from its direct case from  
24 10.5 percent to 12 percent despite the fact that water  
25 utilities are now being viewed as an attractive investment

1 given the current state of the economy and interest rates  
2 have declined.

3           The company also proposes an imprudent capital  
4 structure, which is its actual capital structure, of  
5 97.21 percent common equity and 2.79 percent long-term  
6 debt. RUCO's proposal of a hypothetical capital structure  
7 of 60 percent equity and 40 percent long-term debt is in  
8 line with the industry average.

9           Thank you, Your Honor.

10          ALJ WOLFE: Thank you.

11          For Staff?

12          MS. SCOTT: Thank you. Nancy Scott on behalf of  
13 Staff.

14          Your Honor, as noted by Mr. Crockett in his  
15 opening, the major issues that remain in this case pertain  
16 primarily to the determination of the value of rate base.  
17 And as Staff is recommending a rate base that is negative  
18 in this case for both of water and the wastewater  
19 divisions, we are recommending the use of a 10 percent  
20 operating margin in place of the rate of return.

21          In particular there are disagreements regarding  
22 Staff's recommended disallowances for plant, lacking  
23 adequate documentation, and for capitalized affiliate  
24 profit. Staff based both of these recommended  
25 disallowances on its determination that contrary to

1 Commission rules the company was unable to provide  
2 complete, authentic, and accurate records and source  
3 documentation that accurately reflect the value of the  
4 plant as proposed.

5 Further in the case of the affiliate profit, it  
6 is Staff's belief that much, if not all, of the plant for  
7 the company is constructed by affiliates. And when  
8 affiliates include profit margins with allocated costs and  
9 overhead, the potential always exists to circumvent the  
10 Commission's ability to regulate the return on equity of  
11 the utility, and it also has the ability to undermine the  
12 Commission's mandate to set just and reasonable rates.

13 Without complete and accurate records the  
14 Commission cannot verify whether the allocated costs were  
15 actually incurred or whether they were prudent and whether  
16 the claimed profits are accurate.

17 As noted by Mr. Crockett, the company has  
18 provided volumes, reams of paper, of documentation over  
19 the last eight months, and while slow and difficult in the  
20 beginning, they have continued to provide, up until this  
21 week, a large volume of documents. However, Your Honor,  
22 quantity does not equal quality. Large volumes of  
23 documents do not mean that the documents provided perform  
24 the purpose for which they are designed, which is to  
25 accurately reflect the value of the plant and be able to

1 tie it out to the plant values proposed by the company.

2 Disagreements also remain regarding the treatment  
3 of the plant deemed not used and useful and plant deemed  
4 as excess capacity, additionally the unexpended hook-up  
5 fees and the treatment of income taxes.

6 Plant that is not currently serving customers,  
7 particularly in those areas where homes are not even yet  
8 constructed, and plant that is not needed to serve current  
9 customers or customers in the near term should not be  
10 included in the rate base for current ratepayers.

11 The unexpended hook-up fees, as noted by  
12 Mr. Pozefsky, while they do create a temporary mismatch,  
13 are still funds that are available for the company's use,  
14 and should therefore rightfully be used to lower the rate  
15 base.

16 Regarding income taxes, Staff agrees. At some  
17 point presumably the company evaluated all the pros and  
18 cons of the various types of business entities under which  
19 they could organize. And the company chose to organize  
20 itself as an LLC. That decision included as well making  
21 an election to be taxed as an LLC, to be taxed as a  
22 partnership, whereby the income taxes are not the  
23 liability of the company but rather are the responsibility  
24 of the individual owners. These are not valid company  
25 expenses and should not be the burden of ratepayers.



1 Other issues include Staff's recommended  
2 discontinuance of the hook-up fees, which derive also from  
3 Staff's determination of inadequate recordkeeping.

4 Further the treatment of the CAGRD fees, while  
5 Staff now agrees that the company should be allowed to  
6 pass through those fees to the ratepayers, we recommend so  
7 only if the company is required to comply with certain  
8 appropriate conditions, which would be in place for the  
9 protection of the ratepayers. Without these recommended  
10 conditions and protections, Staff would not recommend the  
11 pass-through of these fees.

12 We note there is one other smaller outstanding  
13 issue which Mr. Crockett didn't address, which is the  
14 water loss issue. And we would just note that, even as we  
15 speak, Staff is working with the company, and hopefully  
16 this issue will be resolved as well.

17 Our recommendations on all of these issues will  
18 be supported at hearing through the testimony of Staff  
19 witnesses Mr. Scott and Mr. Michlik.

20 Thank you.

21 ALJ WOLFE: Thank you. We will take a break  
22 before we start the evidentiary portion of the proceeding  
23 today, but I did want to make a note. I'm probably going  
24 to receive the hearing calendar for next week. On Monday  
25 we are pushing it back a little further. Instead of

1 starting at 11:00 a.m., we will be starting at 1:00 p.m.,  
2 so that we can use this room.

3 The other times that I announced at the  
4 prehearing conference remain the same.

5 Okay. We will take a break for 15 minutes and  
6 come back here at 11:35.

7 (Whereupon, a recess was taken from 11:18 a.m.  
8 until 11:41 a.m.)

9 ALJ WOLFE: Let's go back on the record.

10 Are there any procedural issues that the parties  
11 need to discuss prior to Mr. Crockett calling his witness?

12 MR. CROCKETT: I don't think so, Your Honor.

13 ALJ WOLFE: Okay. Would you like to call your  
14 first witness?

15 MR. CROCKETT: Yes. The company calls  
16 Brian Tompsett.

17

18 BRIAN TOMPSETT,  
19 called as a witness herein, appearing on behalf of the  
20 Applicant, having been first duly sworn, was examined and  
21 testified as follows:

22

23 DIRECT EXAMINATION

24

25 BY MR. CROCKETT:

1 Q. Good morning, Mr. Tompsett.

2 A. Good morning.

3 Q. Would you please state your name and business  
4 address for the record.

5 A. Yes, Brian Tompsett. Business address is with  
6 Johnson Utilities, 5230 East Shea Boulevard, Scottsdale.

7 Q. By whom are you employed and in what capacity?

8 A. I'm the executive vice president of Johnson  
9 Utilities.

10 Q. How long have you been employed by Johnson  
11 Utilities?

12 A. Since the latter part of '02.

13 Q. Is that the first time you had dealings with  
14 Johnson Utilities?

15 A. No. I performed engineering services as a  
16 consultant for Johnson Utilities since about 1997.

17 Q. Is Johnson Utilities the applicant in this case?

18 A. Yes, it is.

19 Q. And are you authorized to testify today on behalf  
20 of Johnson Utilities?

21 A. Yes, I am.

22 Q. Has Johnson Utilities retained an expert witness  
23 in this case?

24 A. Yes, we have.

25 Q. And is that Mr. Thomas Bourassa?

1 A. Yes. That's correct.

2 Q. And will Mr. Bourassa be testifying on certain  
3 matters in the rate case?

4 A. Yes, he will.

5 Q. Has Mr. Bourassa submitted prefiled testimony in  
6 this case?

7 A. Yes, he has.

8 Q. And will he be sponsoring that testimony?

9 A. Yes. The case was prepared at my direction, and  
10 Mr. Bourassa was sponsoring his own testimony.

11 Q. And is Mr. Bourassa authorized to testify on  
12 behalf of Johnson Utilities?

13 A. Yes, he is.

14 Q. Mr. Tompsett, are you and Mr. Bourassa the  
15 individuals who have primary responsibility for the  
16 prosecution of this rate case?

17 A. Yes, we are.

18 Q. Would you please describe your educational  
19 background?

20 A. I received a bachelor's of science degree in  
21 civil engineering and then I'm a licensed professional  
22 engineer in the state of Arizona and a few others.

23 Q. Where did you do your schooling?

24 A. Went to school at Bradley University in Illinois.

25 Q. And would you please describe your work

1 experience starting after you graduated from college?

2 A. The majority of my experience has been in water  
3 and wastewater system design, subdivision designs, the  
4 preparation of residential projects for home building. So  
5 it's typical civil engineering-type design work.

6 Q. And in what states have you worked as a civil  
7 engineer?

8 A. I started off my career and worked in Illinois.  
9 I have done work in Colorado, Nevada, and Arizona.

10 Q. And does your work in Arizona, working  
11 experience, go back to 1997?

12 A. In Arizona, yes.

13 Q. Is that when you came to the state?

14 A. That is when I came to the state, yes.

15 Q. And I believe you indicated that that was the  
16 time you first established a relationship with Johnson  
17 Utilities?

18 A. That's correct. I was working as a consultant  
19 for the utility.

20 Q. And in that regard what types of activities were  
21 you engaged in for the company?

22 A. '97 to '98 I was responsible for the initial  
23 design of some of the water systems, some of the  
24 wastewater systems, some of the water and sewer designs  
25 for the subdivision in the initial subdivisions and

1 processing of permit applications through ADEQ, DWR.

2 Q. Now, Johnson Utilities obtained its CC&N in 1997?

3 A. Yes. That's correct.

4 Q. And is it fair to say that you began designing  
5 water and wastewater systems for Johnson Utilities at the  
6 company's beginning?

7 A. Yes, that would be fair.

8 Q. Are you very familiar with the design and  
9 operation of the company's water and wastewater systems?

10 A. Yes, I am.

11 Q. And is that because you designed those systems?

12 A. Designed all initial systems, but I also am aware  
13 of what the new designs and expansions are.

14 Q. Now, as executive vice president of Johnson  
15 Utilities, please describe your work responsibilities.

16 A. Typically oversee all the day-to-day-type  
17 operations. I'm involved in the overseeing of the permit  
18 processing with the Department of Environmental Quality,  
19 Department of Water Resources, interaction with the  
20 Corporation Commission on various issues. Also I deal  
21 with the contracts associated with subdivision expansions.  
22 Just pretty much the day-to-day operation, if you will, of  
23 the utility as a corporation.

24 Q. Have you testified previously before the Arizona  
25 Corporation Commission?

1           A.     Yes, I have.

2           Q.     Mr. Tompsett, have you prefiled testimony in this  
3 case?

4           A.     Yes, I have.

5           Q.     We have placed in front of you copies of some  
6 testimony that has been marked as exhibits.

7                     Would you please identify what has been marked as  
8 Exhibit A-5?

9           A.     Yes. I have Exhibit A-5 as the Brian Tompsett  
10 rebuttal testimony.

11          Q.     Okay. And for the record, I believe that is  
12 titled the Prefiled Rebuttal Testimony of Brian Tompsett  
13 dated March 9, 2009?

14          A.     Yes. That's correct.

15          Q.     Now, Mr. Tompsett, would you locate Exhibit A-6.

16          A.     Yes. A-6 is titled Prefiled Supplemental  
17 Rebuttal Testimony of Brian Tompsett dated March 23, 2009.

18          Q.     Finally, the exhibit that has been marked A-7,  
19 would you locate that?

20          A.     Okay. I have Exhibit A-7 as the Prefiled  
21 Rejoinder Testimony of Brian Tompsett dated April 16,  
22 2009.

23          Q.     Mr. Tompsett, were each of these three pieces of  
24 testimony prepared by you or under your direct  
25 supervision?

1 A. Yes, they were.

2 Q. And the testimony is organized in a  
3 question-and-answer format; is that correct?

4 A. That's correct.

5 Q. And if I asked you each of the questions that are  
6 contained in your testimony today, would your answers be  
7 the same or substantially the same?

8 A. Yes, they would.

9 Q. Do you have any changes or revisions to your  
10 prefiled testimony today?

11 A. No, I don't.

12 Q. Is the prefiled testimony correct, accurate and  
13 complete, to the best of your knowledge?

14 A. Yes, it is.

15 Q. Mr. Tompsett, are Exhibits A-1 through A-4  
16 exhibits that Mr. Bourassa will be sponsoring?

17 A. Yes, they are.

18 MR. CROCKETT: Your Honor, at this point I would  
19 move the admission of the company's prefiled testimony,  
20 which has been marked as Exhibits A-5, A-6 and A-7.

21 ALJ WOLFE: A-5, A-6, and A-7 are admitted.

22 (A-5, A-6, and A-7 were admitted.)

23 MR. CROCKETT: Thank you. Your Honor, that is  
24 all I have for Mr. Tompsett. I will make him available  
25 for cross-examination.



1 ALJ WOLFE: Thank you.

2 Mr. Marks, do you have questions for  
3 Mr. Tompsett?

4 MR. MARKS: Thank you, Your Honor. I do.

5

6 CROSS-EXAMINATION

7

8 BY MR. MARKS:

9 Q. Mr. Tompsett, good morning.

10 A. Good morning, Mr. Marks.

11 Q. Your title is executive vice president; is that  
12 correct?

13 A. Yes, sir.

14 Q. And who do you report to at Johnson Utilities?

15 A. I report to Mr. Johnson.

16 Q. And do you do work for any other of Mr. Johnson's  
17 companies?

18 A. I do on occasion, yes.

19 Q. And do you keep track of your time so that it's  
20 appropriately billed between the utility and the other  
21 companies?

22 A. No, I don't.

23 Q. Who are some of the other members of the  
24 management team at Johnson Utilities?

25 A. At corporate office?

1 Q. Sure. Let's start there.

2 A. Okay. We have a number of accountants:

3 Scott Devon is in our accounting department;

4 December Davis; Susan Smith; and Michelle -- I'm drawing a

5 blank on Michelle's last name. I'll get it in a minute.

6 Q. Other officers?

7 A. No other officers of the company, no.

8 Q. And what is Ms. Davis' role?

9 A. I believe her title is the CFO.

10 Q. Chief financial officer?

11 A. Yes, sir.

12 Q. A gentleman named Gary Larson, does he work for  
13 the corporation?

14 A. Gary Larson is the field manager for Johnson  
15 Utilities, yes.

16 Q. What is a field manager?

17 A. He works out of the Queen Creek office located  
18 adjacent to Johnson Ranch. That is where the majority of  
19 the billings and collection and field work is performed  
20 from.

21 Q. And I referred to the LLC as a corporation. I  
22 apologize for doing that. I will probably do it again  
23 unfortunately.

24 Now, Mr. Larson, who does he report to?

25 A. He would report up to me.

1 Q. When you started -- let me back up.

2 I believe you testified you started with Johnson  
3 Utilities in 2002; is that correct?

4 A. Yes, sir. That's correct.

5 Q. And what was your title when you started there  
6 then?

7 A. The title I started with was executive vice  
8 president.

9 Q. Have your duties actually changed over the last  
10 seven years?

11 A. They have grown as the company has grown.

12 Q. And you stated you report to Mr. Johnson.

13 Is he also -- is his office also there on Shea  
14 Boulevard where your office is?

15 A. Yes, it is.

16 Q. And he also runs other companies or LLCs, or I  
17 will just call them entities for short, out of that  
18 location; is that correct?

19 A. Yes. Mr. Johnson does have other entities.

20 Q. And does he have any other offices beside the  
21 Shea location?

22 A. Well, I previously mentioned we have the office  
23 down at -- the Johnson Utilities office down at Johnson  
24 Ranch, and Mr. Johnson has, for lack of a better term,  
25 offices in other entities that he has interests in.

1 Q. Thank you.

2 MR. MARKS: If I could approach.

3 ALJ WOLFE: Yes.

4 Q. BY MR. MARKS: Mr. Tompsett, I have provided you  
5 a document that has been marked as SF-1.

6 Do you have it with you?

7 A. Yes, I do.

8 Q. And this is a one-page data request that -- well,  
9 this was a one-page data request, and I would like you to  
10 focus on 3.4.

11 But all questions on this page were answered by  
12 you, were they not?

13 A. Yes, sir.

14 Q. And on the data request and in response to 3.4 it  
15 states, "Please admit or deny that George Johnson acts as  
16 the chief executive of Johnson Utilities, LLC."

17 And your response was, "Mr. Johnson owns the  
18 majority interest in Johnson Utilities, LLC, which  
19 gives him ultimate decision-making authority for the  
20 company."

21 Is that still correct?

22 A. Yes, sir.

23 Q. Thank you.

24 MR. MARKS: If I could have a moment to pass out  
25 a few more.

1 Before I start on that, I move S-1 at this time.

2 ALJ WOLFE: Is there any objection?

3 MR. CROCKETT: No, Your Honor.

4 ALJ WOLFE: Exhibit SF-1 is admitted.

5 (SF-1 was admitted.)

6 Q. BY MR. MARKS: Mr. Tompsett, do you have what is  
7 marked as SF-2 in front of you?

8 A. Yes, I do.

9 Q. And would you agree with me that this is a copy  
10 of the Commission's October 25, 2005 decision in Docket  
11 No. WS-02987A-05-0088, and that is Decision No. 68235?

12 A. Yes, that is what the docket is. It has a docket  
13 number and a decision number.

14 Q. I would like you to turn, if you would please, to  
15 page 8. At paragraph 23 it states that Staff recommends  
16 approval of the application. And this was a -- let me  
17 back up.

18 This is a CC&N or Certificate of Convenience and  
19 Necessity application, was it not?

20 A. If you give me a minute here, I will figure out  
21 what it is.

22 Q. Sure.

23 A. Okay. I think I recognize this now. I'm sorry.  
24 I forgot what the question was.

25 Q. I don't mind repeating it.

1           At paragraph 23 -- and I will just cut to the  
2 chase here -- it says that "Staff recommends approval of  
3 the application with requirements as follows, that Johnson  
4 Utilities:" And then included among those at paragraph e  
5 was the condition that "Submit a full rate case filing for  
6 both water and wastewater divisions using a 2005 test year  
7 no later than April 30, 2006."

8           Do you see that?

9       A.    Yes, I do.

10       Q.    I would like you now to turn to page 12 where the  
11 ordering paragraphs continue. And I wonder if you could  
12 read the first ordering paragraph on page 12.

13       A.    Page 12, line 4?

14       Q.    Yes.

15       A.    The decision says that "It is further ordered  
16 that Johnson Utilities company must submit a full rate  
17 case filing for both water and wastewater divisions using  
18 a 2006 test year no later than May 1, 2007.

19       Q.    You said that the decision said that.

20           The Commission says that, does it not?

21       A.    Yes, sir.

22       MR. MARKS: I would move SF-2 at this time.

23       MR. CROCKETT: Your Honor, before we go too much  
24 further down this line of questioning, I would like to  
25 raise an objection and get it resolved now.

1 I think where Mr. Marks is heading is on the  
2 issue of whether the company filed using an appropriate  
3 test year, and this issue was raised previously at an oral  
4 argument. And as I recall Your Honor's ruling, you  
5 indicated this was an issue for legal briefing -- it was a  
6 legal issue for legal briefing in the case. So I don't  
7 know that we need testimony or exhibits on the issue.

8 This case was accepted by the Commission with the  
9 2007 test year, and that is the case that we have all  
10 prepared and we are here today to litigate. And unless  
11 Your Honor is willing to go back and consider whether or  
12 not we should be here on the 2006 test year, I don't know  
13 what the relevance of the line of questioning is.

14 MR. MARKS: Well, Your Honor, this is something  
15 that is raised in the testimony of Ms. Rowell. It's one  
16 of her recommendations. Mr. Crockett already tried to  
17 strike most of the testimony that was being offered in  
18 this case, including that particular issue.

19 As to whether it's been accepted or not, this, in  
20 fact, is an issue; as Your Honor recognizes, it's a legal  
21 issue. I don't intend to spend a lot of time on it. And,  
22 of course, the order itself I would think I would be free  
23 to brief as it is part of the record. However, the next  
24 documents, which are simply pleadings, I don't know what  
25 the status of those are. So I wish to just put those in

1 so that the record will be clear and Mr. Crockett and I  
2 can make whatever legal arguments we wish to make.

3 ALJ WOLFE: Mr. Crockett, from the copies that I  
4 have of SF-2 through 6, it looks like they are documents  
5 that have been filed in Commission's docket control.

6 Would you stipulate to us taking administrative  
7 notice of these documents?

8 MR. CROCKETT: I would stipulate to that, Your  
9 Honor.

10 ALJ WOLFE: Would that be satisfactory,  
11 Mr. Marks?

12 MR. MARKS: I'm struggling with exactly what the  
13 difference is between taking administrative notice of it  
14 or admitting it as an exhibit.

15 ALJ WOLFE: They are marked as an exhibit. They  
16 would be part of the record, and you can quote them as you  
17 like in your legal argument.

18 MR. MARKS: That is fine then. Thank you.

19 ALJ WOLFE: Okay. So SF-2, 3, 4, 5, 6 I'm taking  
20 administrative notice of, and they can be cited in the  
21 parties' briefs.

22 (SF-2, SF-3, SF-4, SF-5, SF-6 will be given  
23 administrative notice.)

24 ALJ WOLFE: I'm not going to prevent you from  
25 asking questions about the substance of these, if you have



1 questions of fact for this witness, and, of course,  
2 subject to further objection.

3 MR. MARKS: Just a couple brief questions, and I  
4 appreciate that, Your Honor.

5 Q. BY MR. MARKS: Mr. Tompsett, at that time who was  
6 the company's attorney in -- I'm sorry. That wasn't clear  
7 at all.

8 At the time -- let's turn to SF-3, and that is a  
9 document that was docketed in March of 2007 by  
10 Mr. Sallquist.

11 Was he acting on behalf of Johnson Utilities  
12 company at that time?

13 A. Yes, I believe he was.

14 Q. And there were two issues, as I see, that were in  
15 there. One had to do with the performance bond issue, and  
16 I believe that was satisfactorily resolved; is that  
17 correct?

18 A. Can you give me a minute to read this?

19 Q. Absolutely.

20 A. Okay, Mr. Marks.

21 Q. This document -- let me back up a little further  
22 -- was predicated because at the time Johnson Utilities  
23 was considering a sale of its assets to the City of  
24 Florence; is that correct?

25 A. Yes. That's correct.

1 Q. And then there was an issue of a performance bond  
2 as the subject of this pleading; is that correct?

3 A. That is what this says, yes.

4 Q. And that has been resolved to your satisfaction  
5 or to the best of your knowledge?

6 A. Yes, a performance bond was docketed with the  
7 Commission.

8 Q. And then at paragraph 5 it says, "The company  
9 requests that the Commission issue a procedural order  
10 extending a filing date to June 1st of 2008 using a 2007  
11 test year."

12 Do you see that?

13 A. Yes, I do.

14 Q. Do you know if the Commission ever issued a  
15 procedural order extending the filing deadline?

16 A. I don't believe there was ever a procedural order  
17 issued. There was a letter from the ACC counsel that was  
18 ultimately issued.

19 Q. And I asked you if the Commission ever issued a  
20 procedural order.

21 A. Not that I'm aware of, no.

22 Q. Thank you.

23 I would like you to turn to SF-4, please. Take a  
24 minute to look it over, if you would.

25 A. Thank you. Okay.

1 Q. Now, let me back up further.

2 This document is dated October 1st of 2007; is  
3 that correct?

4 A. That's correct.

5 Q. And on page 2 the company again asked, in this  
6 case the Hearing Division, to issue a procedural order  
7 extending the compliance dates, and you state that that  
8 was supported by Staff at that time; is that correct?

9 A. Yes, sir.

10 Q. And the compliance dates that we are talking  
11 about here were the date to file the testimony that were  
12 contained in the original order, which was Decision 68235?

13 A. I'm sorry. Which exhibit is that?

14 Q. That was SF-2, the decision.

15 A. Yes.

16 Q. I would like you to turn to what has been marked  
17 as SF-5, and this -- take a moment to look it over.

18 A. Thank you. Okay.

19 Q. And this is a letter from Mr. Sallquist, again,  
20 dated December 6, 2007?

21 A. Yes, sir.

22 Q. If you could read the last paragraph into the  
23 record.

24 A. I'm sorry. The last paragraph on the first page?

25 Q. Yes, sir.

1       A.     Okay. "We understand that because the original  
2 compliant dates were adopted in the subject decision, the  
3 Hearing Division may be hesitant to formally extend those  
4 days. If the Hearing Division cannot do so, we would  
5 request that the Commission issue an Opinion and Order  
6 adopting the parties' agreed upon compliance dates."

7       Q.     I would like if you could to turn Exhibit SF-6  
8 and take a moment to look that over.

9       A.     Okay. Sorry. The question was?

10      Q.     There is no question pending.

11      A.     Oh, okay.

12      Q.     This is another motion in this case filed  
13 December 27th of 2007 by Mr. Sallquist, is it not?

14      A.     Yes. It's been docketed as December 27th, that's  
15 correct.

16      Q.     If you turn to page 2.

17      A.     Okay.

18      Q.     And would you agree that the request reads in  
19 relevant part starting on line 10, "Wherefore, the company  
20 respectfully requests that the Hearing Division issue a  
21 procedural order or a Recommended Opinion and Order  
22 including provisions that," and then we will skip to  
23 No. 4, "extend the compliance dates as recommended by  
24 Staff for filing the rate application to March 31, 2008,  
25 utilizing a 2007 test year"; is that correct?

1           A.     That's correct.

2           Q.     Now, at any time, to your knowledge,  
3 Mr. Tompsett, did the Commission order Johnson Utilities  
4 to file a rate case for its water and wastewater divisions  
5 by May 1, 2007 using a 2006 test year?

6           A.     To my recollection there was never an order  
7 issued. We merely received a letter from chief counsel of  
8 the Commission at that time or subsequent to this filing.

9           Q.     And I will repeat the question. We understand  
10 who the players are here.

11                   Did the Commission order Johnson Utilities to  
12 file a rate case for its water and wastewater divisions by  
13 May 7th -- I'm sorry -- May 1, 2007, using a 2006 test  
14 year?

15                   MR. CROCKETT: Your Honor, I will object. The  
16 decision speaks for itself, the exhibit marked as SF-2.  
17 If that is what Mr. Marks is getting at, the decision  
18 indicates that the company should file a rate case using a  
19 2006 test year. I don't know why he is engaging  
20 Mr. Tompsett on this issue.

21                   ALJ WOLFE: Mr. Marks?

22                   MR. MARKS: I would like Mr. Tompsett's answer to  
23 that based on SF-7 and his response to subsequent data  
24 requests.

25                   MR. CROCKETT: And I don't know that we have the

1 subsequent data request in front of us; do we?

2 MR. MARKS: SF-7.

3 MR. CROCKETT: Oh, that is the data request?

4 Okay.

5 MR. MARKS: I haven't gotten there yet. Go ahead  
6 and look ahead if you'd like.

7 ALJ WOLFE: You may answer the question,  
8 Mr. Tompsett.

9 THE WITNESS: If you could repeat it or read it  
10 back or however that works.

11 Q. BY MR. MARKS: In Decision 68235 did the  
12 Commission order Johnson Utilities to file a rate case for  
13 its water and wastewater divisions by May 1, 2007 using a  
14 2006 test year?

15 A. Yes, it did.

16 Q. Now, Mr. Tompsett, do you have what has been  
17 marked as Exhibit SF-7 in front of you?

18 A. Yes, I do.

19 Q. Take a moment to look over question 3.11 and your  
20 answer.

21 A. Okay.

22 Q. The question -- I will read the question:

23 "Please admit or deny that in Decision 68235 the  
24 Commission ordered Utility to file a rate case for its  
25 water and wastewater divisions by May 1, 2007 using a 2006

1 test year. If your answer is deny, please explain your  
2 answer."

3 And in your response I don't see any admission  
4 that the Commission ordered Utility to file a rate case by  
5 May 1, 2007 using a 2006 test year.

6 Am I missing something here?

7 A. No, Mr. Marks. The response did not deny that  
8 the Commission issued the order, and it actually laid out  
9 the timeline of events that followed that decision.

10 Q. Well, I believe, Mr. Tompsett -- and you could  
11 have this read back if you would like to -- but I believe  
12 you just admitted that the Commission ordered Utility in  
13 Decision 68235 to file a rate case for its water and  
14 wastewater divisions by May 1, 2007 using a 2006 test  
15 year.

16 Did I miss something?

17 A. No, I don't think so.

18 Q. So are you changing your answer at this point,  
19 Mr. Tompsett?

20 A. No.

21 Q. Help me out here, Mr. Tompsett. You were asked  
22 to admit something in the data request that you just  
23 admitted on the stand, as I understand it; is that  
24 correct?

25 A. That the decision ordered us to file a rate case,

1 yeah. That's correct.

2 Q. But your response does not admit that, does it?

3 A. The response doesn't have the word admit or deny  
4 in it, no.

5 Q. And it doesn't state anywhere yes or any way  
6 affirmatively say that the Commission did, in fact, issue  
7 that order, does it?

8 A. In the response, no.

9 Q. Did your counsel review this response?

10 A. I assume so.

11 Q. Thank you.

12 MR. MARKS: I would like to move Exhibit SF-7.

13 ALJ WOLFE: Is there any objection?

14 MR. CROCKETT: No objection, Your Honor.

15 ALJ WOLFE: SF-7 is admitted.

16 (SF-7 was admitted.)

17 MR. MARKS: I have another exhibit.

18 MR. MANNATO: While Mr. Marks is getting another  
19 exhibit, could I ask the Court what time the Court expects  
20 to take a lunch break?

21 ALJ WOLFE: I don't know how many more questions  
22 or how many more areas you have to explore with  
23 Mr. Tompsett, Mr. Marks. Could you estimate that for us?

24 MR. MARKS: I have quite a bit of  
25 cross-examination for Mr. Tompsett. This particular



1 exhibit and questions will take probably no more than a  
2 minute.

3 ALJ WOLFE: Okay. Let's go ahead and do that,  
4 and then we will break for lunch right after that.

5 MR. MANNATO: Thank you.

6 Q. BY MR. MARKS: Mr. Tompsett, do you have before  
7 you what has been marked as Exhibit SF-8?

8 A. Yes, sir.

9 Q. And what is this document?

10 A. It's a Swing First data request No. 2.6.

11 Q. And did you prepare this response?

12 A. It was prepared at my direction, yes.

13 Q. And the question concerned the amount of -- well,  
14 the question asked for Superfund tax.

15 In your mind is Superfund tax and the Water  
16 Quality Assurance Revolving Fund tax, is that the same  
17 thing?

18 A. Yes, sir.

19 Q. And on customers' bills it appear as a line item  
20 as a Superfund tax; is that correct?

21 A. Yes. That's correct.

22 Q. It's easier to fit that in than Water Quality  
23 Assurance Revolving Fund tax?

24 A. That's fair, I guess.

25 Q. And in there you were asked for the test year of

1 2007 and the two proceeding years how much Utility  
2 collected by customer class through charges for Superfund  
3 tax. And I believe fairly you stated that you didn't  
4 track by customer class but that the total amounts that  
5 were collected are what appeared on the data request; is  
6 that correct?

7 A. Yes, sir.

8 Q. And is this still an accurate response?

9 A. I believe so, yes.

10 MR. MARKS: Your Honor, I would move SF-8 at this  
11 time.

12 ALJ WOLFE: Any objection?

13 MR. CROCKETT: No, Your Honor.

14 ALJ WOLFE: SF-8 is admitted.

15 (SF-8 was admitted.)

16 ALJ WOLFE: And we will take a lunch break at  
17 this time. We will come back here at 1:40. Thank you.

18 (Whereupon, a recess was taken from 12:25 p.m.  
19 until 1:43 p.m.)

20 ALJ WOLFE: Mr. Crockett?

21 MR. CROCKETT: Looks like we are all here and  
22 ready.

23 ALJ WOLFE: Let's go back on the record.

24 Mr. Marks.

25 Q. BY MR. MARKS: Thank you, Your Honor. Good

1 afternoon.

2 Mr. Tompsett, good afternoon.

3 A. Hello, Mr. Marks.

4 Q. Back to Exhibit SF-8. I forget to ask you one  
5 question about it.

6 Do you have that with you?

7 A. Yes, sir.

8 Q. Do you know what the comparable figure is for  
9 2008?

10 A. No, I don't.

11 Q. Thank you.

12 I would like to change the subject to talk about  
13 the May 2008, we will call them -- well, let me back up?

14 Do you know what an SSO is?

15 A. Yes, sir.

16 Q. And what is it?

17 A. In ADEQ's terms it's a sanitary sewer overflow.

18 Q. And there was a sanitary sewer overflow in 2008  
19 from your Pecan Water Treatment Plant; is that correct?

20 A. There was in May '08, yes.

21 Q. And that was in the news quite a bit; correct?

22 A. Yes, sir.

23 Q. And you read Ms. Rowell's testimony; is that  
24 correct?

25 A. Yes, I did read it. I don't have a copy in front

1 of me.

2 Q. That's okay. I'm just asking you if you recall.

3 She included a newspaper article about that

4 particular spill; do you remember that?

5 A. I don't remember a specific newspaper article,

6 but there were articles about it, yes.

7 Q. That's fair.

8 Now, what happened? How did the spills occur or

9 that spill occur?

10 A. The pumps at the lift station at the Pecan plant

11 had become clogged with debris and caused a backup in the

12 sewer system and it overflowed that manhole north of the

13 Pecan plant.

14 Q. And where did the overflow go?

15 A. It came out of a manhole into a concrete storm

16 water run-off area and into a concrete energy dissipater,

17 basically.

18 Q. And there is a residential neighborhood that is

19 near that area; is that correct?

20 A. Yes, there is.

21 Q. And is that known as the Pecan Ranch North

22 subdivision?

23 A. Pecan Creek North.

24 Q. Pecan Creek North, thank you.

25 Now, what sort of actions did the Utility take

1 when it learned of the spill?

2 A. Well, in just kind of concise terms, they  
3 responded to the notice. They removed the debris.

4 Q. You are getting ahead of me.

5 What did you do to immediately respond to the  
6 spill? You are talking about the notice of violation.

7 A. No. No, I'm not. No. The notice that there was  
8 an occurrence happening, so they responded to the notice  
9 that something was happening.

10 So the crews would immediately go out and start  
11 pumping down the manhole, being where the clot took place,  
12 removed debris, and put the system back in order.

13 Q. And what about the resulting sewage discharge?  
14 What was done with that?

15 A. That was collected in ADEQ-approved pumper trucks  
16 and deposited in the wastewater treatment plant.

17 Q. Were there any health consequences to the  
18 residents in the area of the spill?

19 A. No.

20 Q. In connection with the spill, did you conduct any  
21 community meetings or other kind of public outreach?

22 A. Yes, we did.

23 Q. Can you describe those, please.

24 A. We prepared some flyers that were distributed to  
25 the residents that detailed what basically -- in laymen's

1 terms detailed what was flushable material, and if it said  
2 disposable, it wasn't necessarily something you could  
3 flush into a sewer system. And we have had a number of  
4 different community meetings.

5 Q. Did you talk at all at any of these meetings  
6 about what the Utility was doing to resolve the matter?

7 A. Yes.

8 Q. And what did you tell the residents?

9 A. That there were -- well, just the measures that  
10 were taking place: Additional pumps were installed,  
11 larger pumps, and that the screens had -- we had added  
12 additional screens, and also added 24-hour manned  
13 operation at that facility.

14 Q. You mentioned the pumps.

15 What did you do with the pumps?

16 A. We increased the size of the pumps actually.

17 Q. From what to what?

18 A. I don't remember the starting size, but the  
19 finishing was 100 horsepower. This was all documented  
20 with ADEQ, so I don't have those documents in front of me.

21 Q. And I'm not expecting you to have those  
22 memorized. I'm trying to get something here for the  
23 Commission, and, of course, the ADEQ records aren't here  
24 as part of the Commission and as part of this case either.  
25 That is why I'm asking you some of these questions.

1           Mr. Tompsett, to your knowledge, were there any  
2 kind of neighborhood protests or similar activities  
3 involving the Utility?

4           A.     Not at that time. There was a limited protest at  
5 one of the neighborhood meetings we had.

6           Q.     A limited protest? What do you mean by that?

7           A.     There were four or five area residents that were  
8 on the perimeter of a community meeting we had, a picnic  
9 basically, but that was about the extent of it.

10          Q.     And what were they doing?

11          A.     They were driving around the outside of the  
12 picnic area.

13          Q.     That was a protest, driving around? I don't  
14 understand.

15          A.     Well, the protesters were on the perimeter and  
16 they were handing out anti-Johnson fliers, Johnson  
17 Utilities flyers, I guess, and a few residents were  
18 handing out what was purported to be tainted water bottles  
19 that were produced by Johnson Utilities.

20          Q.     Now, I think you mentioned that you have upgraded  
21 the pump size.

22                    You did something to upgrade the screen; is that  
23 correct?

24          A.     Yes.

25          Q.     What else have you done to prevent similar

1 occurrences there at that plant?

2 A. At that plant the SCADA system was also upgraded.

3 Q. And what was the issue with the SCADA system? I  
4 was listening in at the open meeting a couple months ago.  
5 Mr. Crockett talked about the SCADA system, and I heard  
6 you talk about it later on.

7 What was issue with the SCADA system?

8 A. Essentially, most of the SCADA systems that we  
9 use are wireless, and the wireless -- the power lines over  
10 that particular facility were interfering with the  
11 wireless SCADA systems. So we had to go to a hard-line  
12 SCADA system.

13 Q. And what were the consequences for the  
14 interference of the power lines?

15 A. The SCADA system didn't notify the emergency  
16 crews as fast as it should.

17 Q. For the record, what does SCADA stand for? How  
18 about Supervisory Control and Data Acquisition?

19 A. There you go. That sounds right.

20 Q. I think that is right.

21 A. Or close to that.

22 Q. And how would the SCADA system, had it had been  
23 operating -- what would have happened differently if the  
24 SCADA system would have been operating at that time  
25 properly?



1       A.     It would have notified the utility crews that  
2 there was an issue at the lift station.

3       Q.     And the SCADA system effectively monitors  
4 operations at different locations and provides readouts.

5             Is that one of the things it does?

6       A.     That is one of the things it could do, yes.

7       Q.     And you could set it too to trigger alarms if  
8 certain occurrences happen; is that correct?

9       A.     That's right.

10      Q.     And it will also allow, in some instances, remote  
11 operation of the system; is that correct?

12      A.     Some of the systems do that, yes.

13      Q.     Yours doesn't?

14      A.     No.

15      Q.     Now, is there any response from the -- from any  
16 agency of the State of Arizona in connection with that  
17 May 2008 spill?

18      A.     I'm sorry. Could you repeat that?

19      Q.     Was there any reaction or response from any  
20 agency of the State of Arizona in response to the May 2008  
21 spill?

22      A.     Yes. There was an investigation by ADEQ, Arizona  
23 Department of Environmental Quality.

24      Q.     And did you receive what is called a notice of  
25 violation in connection with that?

1 A. Yes, we did.

2 Q. And what is a notice of violation?

3 A. It's a tool that ADEQ uses to notify a utility of  
4 an issue that they may have. They typically ask  
5 questions, and it has conditions.

6 Q. And it says notice of violation, so it's a  
7 potential violation of a state law; is that correct?

8 A. I don't think that is exactly correct.

9 The NOV is a -- I'm not exactly sure how it's  
10 worded, but it's something to the effect that this is a  
11 notification that there -- something is happening, and it  
12 could possibly lead to violations of some sort of  
13 environmental law or rule.

14 Q. And what is the status of that notice of  
15 violation with the Arizona Department of Environmental  
16 Quality?

17 A. That particular NOV is still open.

18 Q. I heard, again listening in, Joan Card from  
19 Arizona Department of Environmental Quality, here at the  
20 Commission probably a couple weeks ago, she said that the  
21 Agency was considering escalating the matter to another  
22 level.

23 Is that your understanding?

24 A. I heard her say that. We haven't -- we have been  
25 talking to ADEQ on that particular NOV and trying to get

1 it revolved, but there hasn't been a lot of progress that  
2 I'm aware of yet.

3 Q. Now, another thing I read press reports about was  
4 a fight with a homeowner association about the authority  
5 of Johnson Utilities to discharge, I don't know if it was  
6 effluent or water or something else, into a wash.

7 Can you help me with that?

8 A. I'm not quite sure what the question was,  
9 Mr. Marks.

10 Q. I read something -- go ahead.

11 A. I'm sorry. I will let you go ahead.

12 Q. I read some press reports that there was  
13 originally a fight and then later a lawsuit concerning  
14 Johnson Utilities' right to discharge, I believe it was  
15 effluent or I think it might have been treated effluent,  
16 into a wash or other area.

17 Am I remembering correctly here?

18 A. There is a -- sort of, I guess.

19 There is a court case that is going on where we,  
20 Johnson Utilities, has a permit from ADEQ to discharge  
21 treated A-plus effluent into the Queen Creek Wash into a  
22 subsurface recharge facility. And the Utility had a lease  
23 with the homeowners association for that property. And  
24 the suit basically revolved around the lease of the  
25 property, not necessarily the use of the wash or the

1 subservice discharge for effluent purposes.

2 Q. Do you remember what homeowners association that  
3 was?

4 A. It's Pecan Creek North HOA.

5 Q. And that is the same one, the same neighborhood  
6 that was affected by the May sewer spill?

7 A. Yes.

8 Q. Now, what is the status of that case now, if you  
9 can say?

10 A. I'm not sure I can really say what the status is.  
11 It's ongoing. It hasn't been resolved or settled.

12 Q. I have an exhibit that I would like to show you.

13 Mr. Tompsett, do you have before you what has  
14 been marked as Exhibit SF-9?

15 A. Yes.

16 Q. And what I did, Mr. Tompsett, just so you are not  
17 blindsided here, is I went down to ADEQ and asked them to  
18 pull copies of all the notices of violation connected with  
19 the wastewater operations of Johnson Utilities over the  
20 last, I believe it was five years or so. And I tried to  
21 assemble a complete package here. And what I would like  
22 to do is go through there. I won't spend a lot of time,  
23 but I would like to go through and ask you about them and  
24 ask what the status is about these notices of violation.

25 That is one of the reasons why I asked you how

1 long you have been at Johnson Utilities. So let's look at  
2 the first one on here in SF-9. And in the upper  
3 right-hand corner it says "Case number."

4 Do you have that?

5 A. Yes.

6 Q. And it's related -- it's dated September 2, 2004,  
7 and it's related to the MGD Precision Golf Course  
8 Wastewater Treatment Plant 142; do you see that?

9 A. Oh, under subject line, yes.

10 Q. Now, I don't remember seeing a wastewater  
11 treatment plant of that name in this case.

12 Has the name changed on the plant?

13 A. No. The Precision Wastewater Treatment Plant is  
14 at that location.

15 Q. It's still named that then? Okay.

16 A. Yes.

17 Q. And I asked you some questions about what a  
18 notice of violation was, and what I see on this -- and I  
19 think the language is pretty consistent -- is in that  
20 first paragraph, the last sentence, it says "ADEQ  
21 discovered the violations alleged below during a file  
22 review completed on August 23, 2004"; do you see that?

23 A. I'm sorry. I was reading this. I'm sorry.  
24 Could you say that again?

25 Q. We had some discussion previously about what a

1 notice of violation was, and I think we had a little bit  
2 of disagreement as to whether there was an alleged  
3 violation of state law or not.

4 Does, in fact, the last sentence of that initial  
5 paragraph state "ADEQ discovered the violations alleged  
6 below during a file review completed on August 23rd of  
7 2004"?

8 A. Yes. The alleged violation, yes.

9 Q. Right, and you did read that.

10 And what was the issue, if you can remember, or  
11 if this would refresh your recollection, in the Notice of  
12 Violation 32021?

13 A. I don't recall specifically, but reading the  
14 alleged violation documents it looks like it's reporting  
15 limits for nitrogens and things like that.

16 Q. What are the reporting limits?

17 A. The aquifer protection permits for each of the  
18 wastewater plants is -- has specific reporting limits that  
19 are alert levels associated with various components of the  
20 water or wastewater or effluent.

21 Q. I see the first one is fecal coliform.

22 What is fecal coliform?

23 A. Well, it's a contaminant or a coliform. It's a  
24 coliform level, a fecal coliform level. It could be a  
25 number of different bacteria that are classified under

1 that.

2 Q. And it's bacteria that would be normally found in  
3 human waste; is that correct?

4 A. Any warm-blooded animal waste, yes.

5 Q. Do you have a lot of other warm-blooded animals  
6 besides humans that are using your wastewater system?

7 A. Not typically.

8 Q. And no lawyer jokes, please.

9 And do you know what the status is of this notice  
10 of violation, whether it's opened or closed?

11 A. As far as I know it's been closed.

12 Q. If you turn to, it's about four or five -- I  
13 think the fifth page in now -- I will wait until you are  
14 there.

15 A. Okay.

16 Q. And it says case ID 33138, dated January 3, 2005,  
17 and it also concerns the Precision Golf Course Wastewater  
18 Treatment Plant.

19 Do you agree with that?

20 A. Yes, that is the subject line.

21 Q. And again, taking a minute to look over that to  
22 refresh your recollection.

23 What did this notice of violation concern?

24 A. Fecal coliform or alleged exceedances.

25 Q. Do you know if this notice of violation is open

1 or closed?

2 A. I'm sure it's been closed by now.

3 There is -- if I can ask something.

4 There is usually a cover sheet that goes on top  
5 of an NOV that says this is a noticing compliance tool  
6 that comes with each one of these.

7 Does ADEQ supply these?

8 Q. A cover letter?

9 A. Yes.

10 Q. And you are correct. I did see some of those in  
11 those files but not all of them. So I thought since this  
12 was the actual notice of violation and in the interest of  
13 preserving our wood resources, I just went to the actual  
14 notice of violation.

15 I would like you now to turn to the third one in  
16 the stack, which is just three pages further in, and that  
17 says case ID 34537.

18 Let me know when you are there.

19 A. Yes.

20 Q. And is that an April 6, 2005 notice of violation  
21 concerning the Section 11 Wastewater Treatment Plant?

22 A. Yes, that is what it says.

23 Q. And Section 11, that is another one of your  
24 wastewater treatment plants?

25 A. Yes, sir.



1 Q. And what was the issue in this notice of  
2 violation?

3 A. It says here the lift station discharged sewage  
4 into a ditch. It says that the Bella Vista Lift Station  
5 discharged 30,000 gallons of sewage into a roadside ditch  
6 and nearby storm water impoundment.

7 Q. I have another exhibit for you.  
8 Do you have SF-10 in front of you?

9 A. Yes.

10 Q. And this is a letter from Gary Larson. You  
11 identified him before, I believe, as being the -- I think  
12 you called him the field manager. It says here he is the  
13 operations manager.

14 Is that the same thing?

15 A. Yes, sir, that would be the same thing.

16 Q. And you are copied on this letter; is that  
17 correct?

18 A. Yes, sir.

19 Q. And who is the letter to?

20 A. It's addressed to Mr. Bill Hare at ADEQ.

21 Q. And in the subject line what does the letter  
22 concern?

23 A. It's the notice of violation ID 34537.

24 Q. And that's the one we were just talking about  
25 where we had the 30,000-gallon sewage discharge; is that

1 correct?

2 A. I believe so. If you give me a minute here.

3 Q. Yes.

4 A. I forgot my glasses here so I'm having a  
5 difficult time.

6 Q. I would loan you mine, but it would make it much  
7 worse.

8 A. No. I will get it here. Don't worry.

9 Q. My arms aren't long enough anymore.

10 A. Okay.

11 Q. And my question to you is, is this the same  
12 notice of violation, 34537, that we were just talking  
13 about that concerned the discharge from the Bella Vista  
14 Lift Station?

15 A. Yes, sir. This would be the answer to the NOV.

16 Q. I would like you to look at the second paragraph  
17 of that letter, and I wondered if you could read the  
18 second, third and fourth paragraphs or second and third  
19 and fourth sentences of that paragraph or if you're having  
20 trouble reading, I could read and you could agree,  
21 whatever you would prefer.

22 A. If you want to read it, that's fine.

23 Q. Sure. Would you agree that it says, "However,  
24 this failure would not have resulted in a spill if the  
25 supervisory control and data acquisition, or SCADA, system

1 was functioning properly. JUC" -- is that Johnson  
2 Utilities Company?

3 A. Yes, sir.

4 Q. -- "is in the process of improving the SCADA  
5 system as evidenced by the attached from Horine Electrical  
6 Service. The improved SCADA system will prevent future  
7 spills like this from accruing by providing early  
8 detection and notification."

9 Did I read that accurately?

10 A. Yes, sir.

11 Q. So you were having SCADA issues in 2005; is that  
12 correct?

13 A. Yes. SCADA systems are added to the system as  
14 the system enlarges, whether they be water plants or  
15 wastewater plants are added. Lift stations are added in  
16 this case, so they are constantly updated.

17 Q. I think my question was, you were having trouble  
18 with your SCADA system, at least in connection with that  
19 wastewater treatment plant, in 2005; is that correct?

20 A. It appears there was, yes. There was an issue  
21 with the SCADA system on this lift station. It's not  
22 associated with -- even though the notice of violation  
23 reads as a Section 11 wastewater plant, this is a lift  
24 station that is not located near there.

25 Q. The attached letter -- I wonder if you could look

1 at that next -- is it pronounced Horine?

2 A. Horine.

3 Q. And the letter is from David Horine to  
4 Gary Larson; is that correct?

5 A. Yes, sir.

6 Q. This, as I understand it, substantiates -- you  
7 put this in here to substantiate what you were telling  
8 ADEQ; is that correct?

9 A. Yes.

10 Q. And the second paragraph says, "We are in the  
11 process of changing the complete SCADA system out from AGM  
12 to a few different choice suppliers."

13 Who is AGM?

14 A. That was the company that was providing the SCADA  
15 at that time.

16 Q. Are you still using them?

17 A. I don't know if any of our systems have that on  
18 them as of today.

19 Q. And at that time it goes on, the second sentence,  
20 to say, "Because we have had several problems with AGM, we  
21 have not been replacing faulty control components, in this  
22 transition from AGM to Possible, US Filter, Allen Bradley,  
23 Modecon or Indicon."

24 Did I read that correctly?

25 A. Yes, you did.

1 Q. So at the time you were converting over basically  
2 your SCADA system from AGM to someone. It looks like you  
3 hadn't determined who you were going with at that point;  
4 is that correct?

5 A. That appeared to be correct at that time, yes.

6 Q. And who is your SCADA system -- who ultimately  
7 provided the replacement SCADA system?

8 A. I don't recall at the moment who the current  
9 provider is.

10 Q. Do you know, is it all one provider or are there  
11 more than one providers in different parts of the system?

12 A. I don't recall at the moment.

13 Q. All right. Back to proposed Exhibit SF-10, I  
14 would like you to now go to the next one in the sequence,  
15 which is case ID 34567 -- it should be two pages past the  
16 previous one -- and let me know when you are there.

17 A. You're back on SF-9?

18 Q. Yes, SF-9. I apologize.

19 A. What was the ID?

20 Q. 34567. That is one I can remember.

21 A. Okay.

22 Q. And the date of this notice of violation was  
23 April 28, 2005, and this one involved the Pecan Water  
24 Reclamation Treatment Plant; is that correct?

25 A. Yes, sir.

1 Q. And what were the issues at that time with the  
2 Pecan plant? I never know if it's supposed to be Pecan or  
3 Pecan or whatever. I will probably pronounce it more than  
4 one way.

5 A. That is fine.

6 It's alleging a purported exceedance of a  
7 single-sample fecal coliform maximum.

8 Q. And failure to conduct turbidity monitoring?

9 A. Yes.

10 Q. What is turbidity?

11 A. It's essentially just the cloudiness of the  
12 water, the effluent.

13 Q. And this letter or this notice of violation, this  
14 is -- none of this is my writing in the file that says  
15 "Closed May 17th of '05."

16 Does that meet with your recollection?

17 A. I don't recall this specifically. That is what  
18 it says.

19 Q. As far as you know it's closed?

20 A. Yes.

21 Q. Okay. Two more pages in, notice of violation  
22 35075.

23 Are you there?

24 A. Yes.

25 Q. And this is dated July 26, 2005; is that correct?

1 A. Yes, it is.

2 Q. And this involved the Precision Golf Course  
3 Wastewater Treatment Plant; is that correct?

4 A. Yes, that is in the subject line.

5 Q. And what was the issue in this notice of  
6 violation?

7 A. It's -- the allegation is that the monitoring for  
8 nitrogen again was reported at a five-month geometric  
9 mean. It says that it exceeded the limit for nitrogen in  
10 five months in '05.

11 Q. What is the issue with nitrogen?

12 A. The ADEQ groundwater limits for nitrogen in  
13 groundwater or drinking water is 10 milligrams per liter.  
14 And effluent, that is the typical criteria for nitrogen  
15 levels, the total nitrogen in effluent.

16 Q. So this involves the treated level out of the  
17 plant, not the waste going into the plant; is that  
18 correct?

19 A. That appears so, yes. That's correct.

20 Q. Okay. For the Precision Golf Course -- let me  
21 back up.

22 Are there different classes of treated effluent?

23 A. Yes, there are.

24 Q. And do you know what class comes out of the  
25 Precision Golf Course Wastewater Treatment Plant?

1       A.     Well, I guess now is as good of time to address  
2 this as any.

3             The Precision Golf Course -- and I'm not on these  
4 NOVs -- they were -- ADEQ had been using a misnomer. It's  
5 actually the Section 11. That is what these, the case IDs  
6 and the NOVs, are associated with.

7             So anyway, the subject line, it says Precision  
8 Golf Course. It's actually the Section 11 Wastewater  
9 Treatment Plant.

10       Q.     I thought I asked you that earlier, if that was  
11 the same plant or not.

12       A.     Yeah. And I'm looking at this now. At the time  
13 they were mixing the permits for the Precision and the  
14 Section 11 wastewater plants at the time.

15       Q.     So it's the one located at 1877 East Bella Vista  
16 Road in Queen Creek is the Section 11 treatment plant?

17       A.     No. That is actually the Precision Wastewater  
18 Treatment Plant, but -- so there is a wastewater treatment  
19 plant there at that address, but this -- that plant was  
20 not discharging effluent at the time. This was actually  
21 at the Section 11 Wastewater Treatment Plant.

22       Q.     So they misidentified the plant?

23       A.     In the subject line.

24       Q.     In the subject line?

25       A.     Yes.



1 Q. And then later -- there is another spot here.

2 It's in the initial paragraph.

3 And so for the plant that this actually applied  
4 to, the Section 11 plant, what is the quality of the  
5 reclaimed water that comes out of that plant?

6 A. The effluent quality is permitted at B-plus  
7 quality.

8 Q. What is B-plus quality? What kind of purposes  
9 can that be used for?

10 A. There is a whole shopping list of purposes, but  
11 it's basically used for irrigation purposes, non-eatable  
12 crops.

13 Q. Not eatable crops. Okay.

14 Can you use it for like golf courses, for turf,  
15 that sort of thing?

16 A. Yes.

17 Q. And your other plants, what is -- I know at least  
18 the San Tan plant produces class A-plus treated effluent;  
19 is that correct?

20 A. Yes, sir. That's correct.

21 Q. Is A-plus as good as it sounds like? Is it as  
22 best as you can do?

23 A. Yes. A-plus is the highest quality effluent.

24 Q. And what other things can you do with A-plus that  
25 you can't do with the B-plus?

1       A.     The A-plus you can use for any of the B-plus  
2 applications. I can't recall specifically, but it allows  
3 you to do other types of applications beyond and above the  
4 B-plus level because it has more stringent testing  
5 requirements and quality requirements.

6       Q.     Can you drink it?

7       A.     Technically, yes.

8       Q.     Are you allowed to in Arizona?

9       A.     No.

10      Q.     Well, let's go to the next one in the exhibit,  
11 two more pages in, and that is case ID 37416.

12             Are you there?

13      A.     I'm sorry. Number again?

14      Q.     37416.

15      A.     Yes, sir.

16      Q.     And that is dated December 15th, 2005, and  
17 says -- the subject is the Pecan Water Reclamation Plant;  
18 is that correct?

19      A.     Yes, sir.

20      Q.     And is that the right plant this time?

21      A.     Yes, sir.

22      Q.     I'm sorry. And that is located on -- I don't  
23 know if I will pronounce this right -- Gantzel Road?

24      A.     Yes, sir.

25      Q.     And what was the issue in this notice of

1 violation?

2 A. It's alleging that there was a discharge of 2500  
3 to 5,000 gallons of effluent to the, I'm assuming that is  
4 the Queen Creek Wash.

5 Q. And it goes on to say that the berm area was  
6 breached; is that correct?

7 A. Yes, sir.

8 Q. And I forgot to ask you about the previous NOV,  
9 the 35075.

10 Has that one been closed, to your knowledge?

11 A. To my knowledge, yes.

12 Q. And now looking at 37416, has that been closed?

13 A. Yes.

14 Q. Okay. I would like you again to turn two pages  
15 further on, case ID 84092. Let me know when you are  
16 there.

17 A. Okay.

18 Q. And this is dated August 2, 2007, and it again  
19 involves the Pecan Water Reclamation Plant; is that  
20 correct?

21 A. Yes, sir.

22 Q. And what was the issue in this notice of  
23 violation?

24 A. This is the -- it looks like the berm failure,  
25 and it discharged the effluent onto the plant site. And

1 it says an estimate 5 or 10 percent of the effluent was  
2 discharged into the Ironwood -- Ironwood and Gantzel Road  
3 are the same thing -- causing a sink hole or two soil  
4 subsidences.

5 Q. Do you know if this notice of violation has been  
6 resolved?

7 A. Yes, it's been closed.

8 Q. Two more pages in, case ID 92021. Let me know  
9 when you are there.

10 A. Okay.

11 Q. This is dated March 4, 2008, and it again  
12 involves the Pecan Water Treatment Plant -- Water  
13 Reclamation Plant; is that correct?

14 A. Yes, it does.

15 Q. And what was the issue in this notice of  
16 violation?

17 A. This was -- had to do with an SSO that discharged  
18 approximately 5,000 gallons of sewage into a spillway  
19 located adjacent to a manhole.

20 Q. And through the spillway into Queen Creek, I  
21 believe it says; is that correct?

22 A. That is what it says, yes.

23 Q. And there was an issue.

24 What was the date according to the NOV of the  
25 SSO?

1       A.     The SSO is reported to have occurred on  
2     December 24, '07.

3       Q.     And the NOV goes on to say that Johnson Utilities  
4     didn't notify ADEQ until January 2nd of 2008, after ADEQ  
5     received a citizen's complaint and made e-mail inquiries.  
6             Is that accurate?

7       A.     That is what it says, yes.

8       Q.     You don't disagree with that?

9       A.     I think we did disagree with that in the  
10    documents that we filed with ADEQ with respect to this.

11      Q.     And then there is a second violation here. It's  
12    basically the same incident, but instead being a permit  
13    violation, it's a statutory violation; is that correct?

14      A.     Yes.

15      Q.     Do you know if this has been closed or not?

16      A.     No, I believe this is still open.

17      Q.     Two pages further in -- let me know when you are  
18    there.

19      A.     Yes. Okay.

20      Q.     Okay. That is case ID 97512; is that right?

21      A.     Yes.

22      Q.     And that is dated June 5, 2008, and also involves  
23    the Pecan Water Reclamation Plant; is that correct?

24      A.     Yes.

25      Q.     Is this is the NOV that was issued by ADEQ in

1 response to the May SSOs from the plant?

2 A. Yes, it is.

3 Q. And those occurred on two consecutive days,  
4 according to this, on May 17th and 18th; is that correct?

5 A. That is what this says, yes.

6 Q. And they estimate that approximately  
7 10,000 gallons or more of untreated raw sewage went  
8 through the spillway into Queen Creek; correct?

9 A. That is what it alleged, and we dispute that  
10 claim.

11 Q. And they are showing in this one, just to  
12 summarize, three statutory violations and three permit  
13 violations; is that correct?

14 A. Yes.

15 Q. And I believe you testified earlier that this one  
16 is not yet closed with ADEQ; is that correct?

17 A. This NOV was caused or created a consent order  
18 that the Utility complied with and the treatment of the  
19 Queen Creek Wash. And the consent order that was  
20 associated with this has been closed in the fall of last  
21 year, 2008, but the NOV is still open.

22 Q. Now, this one, I think you have to go  
23 approximately four pages back to case ID 99135. Let me  
24 know when you are there.

25 A. Okay.

1 Q. This one is dated October 8th of 2008, and it  
2 doesn't identify a plant. It just identifies Johnson  
3 Utilities; is that correct?

4 A. Just a minute.

5 I'm sorry. We are on 99135?

6 Q. Yes, sir.

7 A. This is not a -- this is not wastewater. This is  
8 drinking water.

9 Q. And what was the issue with this drinking water  
10 violation?

11 A. ADEQ alleged that we did not have a certified  
12 operator. And we responded to this case that we do have  
13 the required operators employed and on-site.

14 Q. And has this matter been closed?

15 A. I don't believe so, no.

16 Q. Turning a couple pages back to the case ID  
17 102722.

18 A. Okay.

19 Q. This one is dated October 20th, 2008, and it  
20 involves the Johnson Utilities Section 11 Wastewater  
21 Treatment Plant; is that correct?

22 A. Yes. That's correct.

23 Q. And what was the issue in this case?

24 A. They are alleging discharge without the  
25 appropriate APP and disposal of sludge not prescribed in

1 the APP.

2 Q. And there is one statutory violation and one  
3 permit violation here; is that correct?

4 A. That is what this notice of violation says, yes.  
5 We responded to this as well.

6 Q. Is this still open as far as you know?

7 A. Yes, it is.

8 Q. I would like you to turn two pages back to  
9 103357. Let me know when you are there.

10 A. Okay.

11 Q. This is another NOV dated October 20th, 2008,  
12 concerning the Johnson Utilities Section 11 Wastewater  
13 Treatment Plant; is that correct?

14 A. That's correct.

15 Q. All right. And does this concern the same field  
16 inspection that was the subject of the last notice of  
17 violation?

18 A. Yes, it does.

19 Q. This one has quite a list here. I see 13  
20 statutory violations.

21 Am I summarizing it accurately?

22 A. Yes, sir.

23 Q. To your knowledge, is this notice of violation  
24 still open?

25 A. Yes. We have responded to all of the alleged



1 violations on this one as well, and those have been  
2 submitted to ADEQ. But I believe the NOV is still open.

3 Q. And I would like you to turn, if you would  
4 then -- it's a few pages back -- maybe six pages back --  
5 to NOV 103956.

6 A. Okay.

7 Q. And this is dated March 11, 2009, also involves  
8 the Johnson Utilities Section 11 plant; is that correct?

9 A. Yes, it does.

10 Q. And looking through this, this involves the same  
11 incident or the same field inspection by ADEQ that led to  
12 the previous two notices of violation; is that correct?

13 A. No, I don't think that is correct. No. This was  
14 an inspection approximately about two weeks after the  
15 other inspection.

16 103357, that we talked about, the inspection was  
17 on September 25th, 2008, and this case number, 103956, was  
18 a separate inspection by ADEQ on October 7th, 2008.

19 Q. Mr. Tompsett, I see that on page 2 where it says  
20 "Legal authority and nature of other alleged violation,"  
21 about an October 7, 2008 inspection, if I look back on  
22 page 1, the first violation alleged A.R.S. § 49-241, that  
23 it concerns the October 25, 2008 inspection.

24 Am I missing something here or is this not  
25 accurate?

1           A.     No. No. That is exactly what it says.

2                     If you look at that first paragraph it says that  
3 the -- I'm sorry. The -- what you don't have here is the  
4 cover letter that goes with this. It's basically -- as I  
5 recall it says that on September 25th ADEQ or the ADEQ  
6 inspection. They internally referenced it to another  
7 department that subsequently came out on October 7th to  
8 inspect the 55-gallon drums that were on-site.

9           Q.     And is this notice of violation still open along  
10 with the other two related to the Section 11 plant?

11          A.     Yes.

12          Q.     Okay. Thank you.

13                     I have handed you a document, Mr. Tompsett, that  
14 has been marked as SF-11.

15                     Do you have that?

16          A.     Yes, sir.

17          Q.     Can you identify that for the record?

18          A.     It's the inspection report, the ADEQ inspection  
19 report from September 25th and October 7th. They combined  
20 them.

21          Q.     And that is the two dates that you were referring  
22 to earlier?

23          A.     Yes.

24          Q.     Have you seen this document before?

25          A.     Yes, sir.

1       Q.    About three-quarters of the way down the page --  
2   and again, because you don't have your glasses on, I will  
3   read this to you -- it says, "Inspection purposes/scope."  
4   It says, "This was an unannounced complaint inspection  
5   regarding allegations that Johnson Utilities had  
6   unlawfully disposed of sewer sludge or biosolids (buried)  
7   at the Section 11 WWTP"; is that right?

8       A.    Yes.

9       Q.    Now, I would like you to turn to the next page of  
10   the inspection report, inspection details. Again, about  
11   three-quarters of the way down the page it says,  
12   "Pre-inspection discussions at the site: Inspection began  
13   with the execution of Inspection Rights Form by Johnson  
14   Utilities general manager" -- seems to have a lot of  
15   titles -- "Gary Larson. Mr. Larson was questioned about  
16   allegations regarding the burial of biosolids at the  
17   Section 11 plant in the spring of 2008."

18               Is that accurate? Had he been questioned  
19   previously about this?

20       A.    Well, that is what this says.

21       Q.    I'm asking you.

22       A.    Not that I'm aware of, no.

23       Q.    You don't believe he was ever question before the  
24   date of the first inspection?

25       A.    The way I read this, the way I understand this

1 was -- they asked questions when they were on-site.

2 Q. Okay. Turn to -- go ahead.

3 A. Now, this -- again, this is -- I think we state  
4 this is an open notice of violation. We have responded to  
5 ADEQ with the appropriate documents that we think answer  
6 this, and so this is still an ongoing issue with ADEQ.

7 Q. Thank you.

8 It states that Mr. Larson wasn't aware that there  
9 was any sewage sludge on-site at the Section 11 Wastewater  
10 Treatment Plant.

11 Do you know if that is accurate or not?

12 A. That is what this says, yes.

13 Q. I'm asking you. Do you know? Mr. Larson reports  
14 to you. Do you know if he was aware of any sewage sludge  
15 buried on-site at the Section 11 plant?

16 A. There was -- we were temporarily storing some  
17 sludge or biosolids at that site, and that is what this  
18 report is associated with.

19 Q. And would Mr. Larson have known about that?

20 A. Well, this states that he didn't. He was aware  
21 that there was biosolids there at one point and  
22 subsequently after that.

23 Q. You said he was aware at one point? When?

24 A. There was biosolids stored -- temporarily stored  
25 at the site, which we thought were within our permit

1 rights. And that is the issue we have now with ADEQ.

2 Q. And when was that?

3 A. This was in the summer of '08.

4 Q. Okay. And I think you're saying Mr. Larson did  
5 not know or are you saying he did know about that  
6 temporary storage?

7 A. He did not know the complete -- or was not  
8 completely aware of where all the biosolids were located.

9 Q. Further down the page in site review, the second  
10 paragraph, it says, "The site tour subsequently was  
11 directed by ADEQ inspectors to the east side of the  
12 wastewater treatment plant where a significant amount of  
13 biosolids were observed to be scattered on surface area  
14 750 by 50 feet."

15 Is that accurate?

16 A. That is what the site review says, yes.

17 Q. Were there biosolids on the surface at the time  
18 that they visited the plant site?

19 A. Yes.

20 Q. The next paragraph it says, "The disposal area  
21 contained a large open depression where concrete and  
22 plastic debris, along with biosolids, had been deposited."

23 Was that an accurate representation of what they  
24 saw?

25 A. I'm sorry. Could you say that again? I'm lost

1 where you are.

2 Q. This is the third paragraph under site review.

3 "The deposal area contained a large open depression (pit)  
4 where concrete and plastic debris, along with biosolids,  
5 had been deposited."

6 Is that correct?

7 A. Yes.

8 Q. And then staff alleges that when they walked into  
9 this pit they were below grade and standing on top of  
10 biosolids that were covered with two to three inches of  
11 soil.

12 Is that accurate?

13 A. Yes, that is what this says.

14 Q. But was that accurate, to your knowledge? Was  
15 there a pit covered by two or three inches of soil?

16 A. There was an existing pit that had biosolids in  
17 it and did have topsoil on top of it.

18 Q. Had a soil covering?

19 A. Yes.

20 Q. It goes on to say in the fifth paragraph that  
21 "The biosolids beneath the ground surface were moist and  
22 very odorous."

23 Had you visited -- did you visit the site on or  
24 about that time?

25 A. No, I did not, not at that time. I wasn't part

1 of the inspection.

2 Q. Do you disagree that the biosolids beneath the  
3 ground would have been moist and odorous, very odorous?

4 A. That's what ADEQ reported. I wasn't there at the  
5 time.

6 It was a temporary storage site, and the  
7 biosolids have subsequently been removed. And all that  
8 documentation has been provided to ADEQ.

9 Q. Who would know if, in fact, from the company,  
10 whether the biosolids underneath the ground surface were  
11 very moist and very odorous?

12 A. This is ADEQ's report, but if the -- so it would  
13 have been their inspectors that were there. They were  
14 accompanied by Mr. Larson.

15 Q. Now, you said Mr. Larson wasn't aware of this  
16 activity; is that correct?

17 A. That's correct.

18 Q. Who was responsible for constructing the pit and  
19 burying the biosolids?

20 A. The -- again, this has all been documented with  
21 ADEQ.

22 Q. I haven't seen the documentation, so I'm asking  
23 you.

24 A. That is because it's an open NOV. That is why  
25 I'm a little hesitant on some of these things.

1 But the documents that have been provided to ADEQ  
2 that show that the pit that they are alleging was -- had  
3 been there for many years prior to the biosolids being  
4 there. Biosolids were temporary stored there, and they --  
5 per ADEQ rules they were covered with a little bit of dirt  
6 to keep down the odors and vectors. And after this  
7 inspection they were subsequently removed, documented, and  
8 all that documentation was provided to ADEQ.

9 Q. Could I have my question read back, please.

10 (Requested portion of the record read.)

11 THE WITNESS: Oh, so okay. So the pit was  
12 existing. So they would have been constructed many years  
13 ago. I'm not sure who would have constructed it at that  
14 time. But we -- there was a contractor involved in the  
15 placing of the dirt on top of the biosolids.

16 Q. BY MR. MARKS: Mr. Tompsett, I don't think you  
17 have answered my question yet.

18 Who was responsible for placing the biosolids in  
19 the pit and covering the area with dirt?

20 A. Well, they were transported by a transport  
21 company -- Roadrunner Transport Company is who transported  
22 the biosolids to the site -- and then a contractor would  
23 have placed the dirt on top of the biosolids when they  
24 were on the site.

25 Q. And who at Johnson Utilities was responsible for



1 having this done?

2 A. Ultimately that would have been me.

3 Q. So it was under your direction that this took  
4 place?

5 A. Ultimately it would come down to my direction,  
6 yes.

7 Q. Did you direct someone else to do this?

8 A. Not that I recall, no.

9 Q. So you called Roadrunner Transit, I believe you  
10 called it, and you called the contractor and arranged for  
11 this work?

12 A. No. That would have gone through our utility  
13 office. One of them would have made the call.

14 Q. You are being very vague with this.

15 Who would you have called to have this done?

16 A. I'm not sure who actually made the calls. That  
17 is why I'm not -- I'm not intentionally being vague, but I  
18 don't know who actually called the contractor or directed  
19 the disposal driver.

20 Q. My question, Mr. Larson, is, who did you call?

21 A. Who did I call? Okay. I'm not Mr. Larson.

22 Q. I'm sorry. Mr. Tompsett. I apologize.

23 A. And I don't recall at this time who I directed.

24 Q. Okay. On the next page the report goes on to say  
25 that they did some soil borings with an auger device, and

1 the biosolids had a strong sewage odor and were black in  
2 color.

3 Does that sound about right?

4 A. I'm sorry. Where are you reading?

5 Q. I'm on what is now at the top. It says page 5 of  
6 8 under the first paragraph under excavation of burial  
7 site.

8 A. Okay.

9 Q. Should I ask the question again?

10 A. Yes, please.

11 Q. The report states that the biosolids had a strong  
12 sewage odor and were black in color.

13 Does that sound about right?

14 A. Yep. The biosolids is or sludge is typically  
15 black in color and moist.

16 Q. And odorous?

17 A. Yes.

18 Q. And in the next paragraph it says that the  
19 surface areas inspected appear very unstable and on  
20 several occasions the ground surface collapsed and the  
21 inspector sank below the ground surface between one to  
22 two feet.

23 Is that possible?

24 A. That's what they wrote in their report, so I  
25 assume that is possible. Again, I wasn't at the

1 inspection.

2 Q. Now, further down the page, Mr. Tompsett, it says  
3 that there was an October 7, 2008 follow-up inspection,  
4 and we have talked briefly about that; is that correct?

5 A. I'm sorry. Where did you jump to? All the way  
6 at the bottom. Okay.

7 Q. Yes, sir.

8 A. Give me a minute, please.

9 Okay.

10 Q. Give me a moment, please.

11 The date of this follow-up inspection was  
12 Tuesday, October 7, 2008; correct?

13 A. Yes, sir.

14 Q. And the gist of what I read here is that when  
15 ADEQ came back everything had been cleaned up on the site;  
16 is that correct?

17 A. Yes, sir.

18 Q. And if you turn to the seventh page, there's a  
19 large paragraph in the middle of the page, and it says  
20 that -- first of all, who is WQCAU?

21 A. The water quality unit at ADEQ.

22 Q. Is that a different group than inspected the  
23 first time?

24 A. Yes, I think it is. It's the -- it's an acronym.  
25 If you will give me a minute here.

1 Q. I think I can do the WQ, but you will have to  
2 help me after that.

3 A. I'm not seeing the definition of what the acronym  
4 is, but I believe they are referring to the solid  
5 wastewater division of ADEQ.

6 Q. It says that the WQCAU staff -- and this is  
7 the -- I caught the fifth sentence -- that the staff asked  
8 Mr. Larson where the materials, the biosolids and the soil  
9 went, and Mr. Larson responded by saying, "What material?"

10 Were you there at that inspection?

11 A. No, I wasn't.

12 Q. And then it goes on to say when they asked him  
13 some additional questions, he explained -- he said, "You  
14 will have to talk to the lawyer."

15 Had you retained counsel between the first two --  
16 between the first inspection and the second inspection?

17 A. Yes. And as far as Mr. Larson's response saying  
18 what material, I think that was just a little  
19 tongue-in-cheek. He probably shouldn't have said that,  
20 but it appears he did.

21 But, yes, we had retained counsel to respond to  
22 ADEQ. And that is -- like I said, that is still an open  
23 NOV and still ongoing.

24 Q. And at the top of the page, the last sentence of  
25 the paragraph it says, "Mr. Larson informed ADEQ that

1 Johnson Utilities had retained counsel and that he was not  
2 allowed to answer any questions."

3 Is that accurate as far as you know?

4 A. That is accurate as to what this report said. I  
5 think -- or as far as what this report says, yes, that is  
6 true. But ADEQ would have been informed to direct the  
7 questions to counsel, and then Mr. Larson wasn't  
8 authorized to answer any questions.

9 Q. Excuse me a second.

10 I would like you to turn back, if you would, to  
11 SF-9. It's one page from the end, and it's notice of  
12 violation No. 106347. Let me know when you are there.

13 A. Okay. Yes, I have it.

14 Q. And this notice of violation is dated March 9,  
15 2009 and concerns the Oasis Golf Course; is that correct?

16 A. Yes, sir.

17 Q. What was the subject of this notice of violation?

18 A. The ADEQ sent out an inspector to look at a golf  
19 course to see if there was standing water or standing  
20 effluent on the golf course.

21 Q. Why was that an issue?

22 A. In our opinion it wasn't an issue, but ADEQ  
23 thought there was an excessive amount of standing effluent  
24 on the golf course.

25 Q. What is the quality of the effluent that is

1 delivered to the Oasis Golf Course?

2 A. That is B-plus.

3 Q. So that comes from the Section 11 plant?

4 A. That's correct.

5 Q. Thank you.

6 Is this NOV still open?

7 A. No, it's been closed.

8 Q. Thank you.

9 I am skipping a number here. I'm skipping a  
10 couple numbers, Mr. Tompsett. I have provided you a  
11 document marked as SF-14.

12 Do you have that?

13 A. Yes, sir.

14 Q. And I got this from the on-line edition of the  
15 East Valley Tribune. It's a short article dated  
16 April 21st of 2009.

17 Have you seen that before?

18 A. Yes, sir.

19 Q. And its story states that there were  
20 9,000 gallons of effluent that leaked out of a holding  
21 area and into a retention basin from the Pecan Water  
22 Reclamation Plant.

23 Is that accurate?

24 A. That's what it says, yes.

25 Q. I'm sorry. Is that what happened?

1 A. Yes, sir.

2 Q. And this says that it took place on Monday. The  
3 story is dated Monday, April 21st. I assume this would  
4 have been just this week, Monday, April 20th; is that  
5 correct?

6 A. That's correct.

7 Q. What happened?

8 A. Basically what the article said. There was a  
9 breach in a berm beyond the site recharge basin, and  
10 effluent breached through the berm and discharged into an  
11 adjacent storm water retention basin.

12 Q. Have you notified ADEQ about this?

13 A. Yes, we notified them Monday morning.

14 Q. Have you notified the Commission about this?

15 A. Yes, we did, Monday morning also.

16 Q. Do you know if there has been an NOV issued in  
17 connection with this incident?

18 A. There has not, no.

19 Q. Do you know whether there will be or not?

20 A. I don't expect one. I don't know for sure. I  
21 mean this is -- A-plus effluent is irrigation water, and  
22 it was in a storm water retention basin, so I don't  
23 anticipate one.

24 MR. MARKS: All right. That is all I have at  
25 this time, Your Honor, on the subject of NOVs. I would

1 like to move Exhibits SF-9, SF-10, SF-11 and SF-14.

2 ALJ WOLFE: Is there any objection to any of  
3 those exhibits?

4 MR. CROCKETT: Your Honor, not objections to  
5 Exhibits SF-9, 10 and 11. I do object to the introduction  
6 of the newspaper article. I don't know when his -- no one  
7 has really -- it's a newspaper article, and it is what it  
8 is. But I would -- you know, if Mr. Marks wants to put it  
9 on through one of his witnesses, perhaps he can do that.  
10 I would object to it at this time.

11 MR. MARKS: Your Honor, I believe the witness  
12 stated that this accurately reported what happened, and  
13 certainly if he has any disagreements with anything in  
14 here, Mr. Crockett can clear that up on redirect.

15 MR. CROCKETT: Well, then perhaps, Your Honor,  
16 then we could take a look at this document and then report  
17 back whether we do have any disagreements with the account  
18 that is in the newspaper article before it's admitted.

19 ALJ WOLFE: That would be acceptable. I will  
20 withhold ruling on the motion to admit it.

21 SF-9, SF-10 and SF-11 are admitted.

22 (SF-9, SF-10, and SF-11 were admitted.)

23 ALJ WOLFE: Mr. Marks, you have a separate area  
24 of inquiry?

25 MR. MARKS: This would be a good time for a



1 break, if that is what you are asking.

2 ALJ WOLFE: We will come back at 15 after 3:00.

3 (Whereupon, a recess was taken from 3:01 p.m.  
4 until 3:19 p.m.)

5 ALJ WOLFE: Let's go back on the record.

6 Mr. Marks.

7 MR. MARKS: Thank you, Your Honor.

8 Q. BY MR. MARKS: Mr. Tompsett, I have handed you a  
9 document that has been marked Exhibit SF-12.

10 Do you have that?

11 A. Yes, sir.

12 Q. And SF-12 is a copy of the letter from you to the  
13 commissioners dated March 30, 2009; is that correct?

14 A. Yes.

15 Q. And that was docketed on March 30, 2009; is that  
16 correct?

17 A. Yes. That's correct.

18 Q. What was the subject of the letter?

19 A. It was responding to questions that the  
20 Commission had or commissioners had on SSOs, specifically  
21 the Cambria SSOs. And the letter addressed what SSOs were  
22 in general, and I just tried to explain a little bit but a  
23 little bit more definition to the term SSO as you asked me  
24 about earlier today.

25 Q. And again, since we have taken a little break

1 since we talked about it and just so the record is clear,  
2 what is an SSO?

3 A. It's the acronym for sanitary sewer overflow.

4 Q. And you said it referred to the Cambria SSO.

5 What was the Cambria SSO?

6 A. Well, that is just what we referred to as the SSO  
7 that occurred in the Cambria subdivision.

8 Q. And why were you writing to the commissioners  
9 about this SSO?

10 A. In one of the open meetings the Commission was  
11 asking questions about the SSO that got reported to ADEQ  
12 within the Cambria subdivision.

13 Q. And why were they talking about it?

14 A. Well, there was a blockage in the line that  
15 caused an SSO that we responded to and cleaned up and  
16 reported to ADEQ, but we did not report it, in the  
17 Commission's mind, to this Commission in a timely fashion.

18 Q. And why, if you know, as it was conveyed to you,  
19 was that an issue for the Commission at that time?

20 A. There was a CC&N hearing going on shortly after  
21 this, and the Commissioners felt it was relevant to the  
22 hearing at that time. And I was not present at the  
23 hearing, and the information was not provided to the  
24 commissioners during that hearing. And we agreed that it  
25 was relevant and we should have informed the Commission.

1 That is what this letter did.

2 Q. I would like you to turn to page 2 of this  
3 letter, please.

4 A. Okay.

5 Q. The last paragraph that you wrote here says,  
6 "SSOs within Johnson Utilities' service area have been  
7 few, but they do occur on occasion despite the company's  
8 best efforts to prevent them."

9 Do you see where I am?

10 A. Yes, sir.

11 Q. Is that an accurate reading of what you said?

12 A. Yes.

13 Q. You say there have been few.

14 How many SSOs did Johnson Utilities have, say, in  
15 2008, the most recent year?

16 A. I went back and looked at actually '07 and '08,  
17 and for those two years the company averaged about five  
18 per year for '07 and '08. And that ranged anywhere  
19 from -- one of the SSOs reported was as small as a toilet  
20 overflow in a house that came down out of a garage and  
21 down a driveway; some as small as 20 gallons and some  
22 larger than that.

23 Q. When you say it averaged five a year, does that  
24 mean there was ten in 2007 and 2008?

25 A. Ten total, yes.

1 Q. Now, Mr. Tompsett, I don't see that information  
2 anywhere in this letter, the specific number.

3 Is that correct or I did miss something?

4 A. No, I believe that is correct.

5 Q. Is there a reason why you didn't put it in the  
6 letter?

7 A. We were still checking all of our records and  
8 compiling that information.

9 Q. And when did you have that information available?

10 A. Sometime after this letter was submitted.

11 Q. Did you have it available two weeks ago?

12 A. I don't recall exactly when I had it -- when I  
13 finished assembling it or had my people assembling it.  
14 It's been since March 30th, though.

15 Q. I would like to move SF-13 at this time.

16 ALJ WOLFE: SF what?

17 MR. MARKS: I'm sorry. SF-12.

18 ALJ WOLFE: Any objection to SF-12?

19 MR. CROCKETT: Only question I have is on page 3  
20 of the letter there is some highlighting in the paragraph,  
21 the third paragraph, and I don't recall that highlighting  
22 being in the original letter that was docketed.

23 Do you know, Mr. Marks?

24 MR. MARKS: Mr. Crockett is correct. I apologize  
25 for that. I had not meant to copy that as a highlighted

1 portion. So I think that should be disregarded for  
2 purposes of the record.

3 ALJ WOLFE: Is that acceptable to you?

4 MR. CROCKETT: That is acceptable, you know, with  
5 that understanding, then we don't oppose the admission of  
6 SF-12.

7 ALJ WOLFE: SF-12 is admitted.

8 (SF-12 was admitted.)

9 Q. BY MR. MARKS: Mr. Tompsett, do you have SF-13 in  
10 front of you?

11 A. Yes, I do.

12 Q. The first two pages of SF-13 are a data request  
13 dated April 14, 2009 to Mr. Crockett.

14 Have you seen this data request before?

15 A. Yes.

16 Q. The question asks, "Please refer to Utility's  
17 March 30, 2009 letter to the Commissioners in Docket  
18 No. WS-02987-07-0487."

19 Is that the letter we just admitted and you  
20 reviewed?

21 A. Yes, it is.

22 Q. And then the question asks, "For each of the  
23 years 2005 through 2008 and year 2009 to date, please  
24 provide the number of sewer system overflows experienced  
25 by Utility."

1 Is that correct?

2 A. Yes.

3 Q. And you saw this; correct?

4 A. Yes.

5 Q. If you turn to the next page, please.

6 Are you there?

7 A. Yes.

8 Q. That is an e-mail from your -- a copy of an  
9 e-mail from your counsel to me dated Friday, April 17th;  
10 is that correct?

11 A. Yes.

12 Q. And it states, "Johnson Utilities hereby objects  
13 to Swing First Golf data request 7-1 in the rate case on  
14 the grounds that (i) the information requested is not  
15 relevant in the rate case; and (ii) the number of sewer  
16 system overflows is publicly available at the Arizona  
17 Department of Environmental Quality."

18 Did you see this e-mail?

19 A. Yes.

20 MR. CROCKETT: Your Honor, let me just raise an  
21 objection on the grounds of relevance here. I am the one  
22 that drafted the objection in consultation with  
23 Mr. Tompsett. We think it was consistent with an earlier  
24 ruling that you had made in this case where you indicated  
25 that information that was publicly available at ADEQ

1 should be obtained through a public -- through an  
2 inspection by Mr. Marks of the docket there. That was the  
3 nature of the objection, in addition to the fact that it  
4 was coming in really on the eve of preparing for the rate  
5 case.

6 So I don't know the relevance of going through  
7 the objection. Mr. Marks has not contested the objection  
8 prior to getting here today. So I would object to the  
9 ground that it's not relevant.

10 ALJ WOLFE: Overruled.

11 Q. BY MR. MARKS: Now, you just provided me,  
12 Mr. Tompsett, your information for 2007 and 2008 that you  
13 had ten SSOs. You said you had that information some time  
14 ago; is that correct?

15 A. Yes. My people compiled it, and I reviewed it  
16 earlier this week, yes.

17 Q. Did you have it on Friday, April 17, six days  
18 ago?

19 A. No. I didn't review it until earlier this week.  
20 And I only -- I did not look at the years '05 and '06 at  
21 all.

22 Q. But you did not provide the information for 2007  
23 and 2008 to me, did you?

24 A. No.

25 Q. Now, you suggested that you could go and get this

1 information from the Arizona Department of Environment  
2 Quality or Mr. Crockett suggested that; is that correct?

3 A. Yes.

4 Q. Do you know how a member of the public goes about  
5 getting information from ADEQ?

6 A. I assume there are a number of ways. You either  
7 go fill out a request or you apparently obtain the NOV's  
8 from ADEQ.

9 I mean, it's either a request to read a file or a  
10 FOIA, Freedom of Information Act.

11 Q. Have you ever gone down to get copies of files  
12 from ADEQ as a member of the public, not as a member --  
13 not on behalf of your utility?

14 A. Yes, we have -- or yes, I have. It's been a few  
15 years now, but I have in the past.

16 Q. They don't have anything like E-docket here, like  
17 here at the Commission, do they?

18 A. No, they don't have anything like E-docket. They  
19 have ICE, I think is what it's called, system.

20 Q. That isn't current, is it?

21 A. It probably isn't, no.

22 Q. If, in fact, a member of the public has to make a  
23 document request -- first of all, is the first thing that  
24 someone has to do to get a file is to send an e-mail or  
25 letter to ADEQ requesting particular documents?



1       A.     That would be one way to do it. I am sure they  
2 could do it by e-mail or voicemail or message.

3       Q.     I said e-mail or a letter.

4       A.     I think you can request it verbally too, but the  
5 other two would suffice.

6       Q.     And then you have to wait to be contacted that  
7 they located the material; is that correct?

8       A.     Typically, yes.

9       Q.     And then you have to arrange a time to go down  
10 there and view the requested documents; is that correct?

11      A.     Yes.

12      Q.     And then if you view them and you find that they  
13 are the right documents, you have to then further copy  
14 request; is that correct?

15      A.     Depends on the number of documents. I think they  
16 give you a grace of X amount of copies.

17      Q.     Is that as to when they prepare it or as to  
18 whether you have to pay for it or not?

19      A.     I'm not sure.

20      Q.     If you do have, let's say, more than ten copies,  
21 I think we will agree that there is no grace in connection  
22 with that; correct?

23      A.     Are you referring to grace as in a fee?

24      Q.     Fee or preparation while you wait.

25             And you seem to think there is a possibility that

1 they do it while you wait?

2 A. Like I said, it's been a few years since I have  
3 done it, but I think there is some threshold. I don't  
4 remember exactly what it was.

5 Q. And if they have to have copies made, then you  
6 have to wait for them to get the copies and then you have  
7 to make another trip down to ADEQ; is that correct?

8 A. Probably, yes.

9 Q. Mr. Crockett's e-mail to me, what is the date  
10 shown of when that was sent?

11 A. The letter?

12 Q. Mr. Crockett's e-mail of April 17th.

13 A. Oh, well, it's date Friday, April 17th.

14 Q. What time?

15 A. 4:59.

16 Q. P.m.?

17 A. Yes.

18 Q. All right. There was no way I was going to  
19 contact ADEQ on Friday afternoon, was there?

20 A. No.

21 Q. Would you have any reasonable expectation, given  
22 the date of this hearing, that I would be able to obtain  
23 the necessary documents from ADEQ in time for this  
24 hearing?

25 A. I don't see why not. I mean -- the request was

1 made Monday. I would assume you could obtain a document  
2 by now.

3 Q. Mr. Tompsett, I'm not trying to testify here, but  
4 I'm quibbling with what you are saying here in that one.  
5 I had to get the notice of violations from ADEQ. It was a  
6 three-week process.

7 Would you disagree with that?

8 MR. CROCKETT: Objection, Your Honor. I don't  
9 think Mr. Tompsett has any idea how long it took Mr. Marks  
10 to get documents from ADEQ.

11 ALJ WOLFE: Sustained.

12 Q. BY MR. MARKS: Would you think three weeks would  
13 be not typical to get documents?

14 MR. CROCKETT: Object again, Your Honor. He is  
15 asking -- he is trying to draw Mr. Tompsett into his  
16 argument here.

17 Mr. Tompsett has already answered this question  
18 that it's been a number of years since he has gotten  
19 documents from ADEQ, and he doesn't know exactly what the  
20 current procedures, time frames, number of copies, those  
21 kind of things, are. So I don't think this is a relevant  
22 line of questioning.

23 ALJ WOLFE: I don't know whether -- I'm not going  
24 to sustain your objection on grounds of relevance, but it  
25 has been asked and answered.

1 Q. BY MR. MARKS: So let me summarize, Mr. Tompsett.

2 At 4:59 on Friday, when you had the information  
3 for 2007 and 2008, you sent me down to ADEQ to get that  
4 information; is that correct?

5 MR. CROCKETT: Objection. Your Honor, I think  
6 Mr. Tompsett's testimony was that he did not have that  
7 information on Friday the 17th. Mr. Tompsett can --

8 MR. MARKS: Mr. Crockett is correct. I misstated  
9 that.

10 Q. BY MR. MARKS: At any time after Friday,  
11 April 17th, when you obtained the information, did you  
12 attempt to provide that to me?

13 A. The reporter can tell -- I think I testified I  
14 looked at the information earlier this week. But, no, I  
15 did not try to give that information to you. I didn't  
16 know we were going to be discussing it today.

17 Q. And Mr. Crockett said he was going to provide a  
18 more detailed objection when he actually responded to the  
19 data request on Tuesday, April 21, 2009.

20 Do you know if he has provided me sort of a more  
21 detailed objection or response since Friday?

22 A. I don't know.

23 Q. Did you have the information on Tuesday, two days  
24 ago?

25 A. I think that is when I put it together, was

1 Tuesday.

2 Q. And you didn't contact Mr. -- strike that.

3 You didn't make any effort to make sure that that  
4 information got to me?

5 MR. CROCKETT: Objection, Your Honor. Again,  
6 there was an objection that was put to Mr. Marks. There  
7 was no obligation once the objection had been raised to  
8 provide the data to him, the information.

9 The objection states that we were objecting on  
10 the grounds of relevance and that he needed to contact  
11 ADEQ to get the information. And he has obviously gotten  
12 information out of ADEQ because we have been going over it  
13 for a couple hours this afternoon.

14 MR. MARKS: And, Mr. Crockett, I did not get any  
15 information on the SSOs from ADEQ. Your witness provided  
16 that information on the stand based on information that he  
17 had available on Tuesday.

18 MR. CROCKETT: I don't think he has testified  
19 that he had it available on Tuesday. He said he looked at  
20 it earlier this week.

21 And again, I don't know what the point of this  
22 exercise is. There was an objection that was made, and  
23 you have not followed up on that objection.

24 ALJ WOLFE: There is a speaking objection going  
25 on right now, and I'm going to overrule it.

1 Please answer the question. If you need it read  
2 back, we can read it back.

3 THE WITNESS: I think we should do that, if you  
4 would.

5 (Requested portion of the record read.)

6 THE WITNESS: No, I didn't. But I need to ask an  
7 attorney question, whether -- on the timing of when I  
8 discussed it with Mr. Crockett. Because Mr. Crockett  
9 didn't know about it -- I didn't discuss the SSO number  
10 with Mr. Crockett until just recently.

11 Q. BY MR. MARKS: Okay. Is there a -- does that  
12 conclude your response?

13 A. I don't know. Did it answer your question?

14 Q. Well, I was satisfied with the first part of it.

15 MR. MARKS: Your Honor, I would move at this time  
16 SF-13.

17 ALJ WOLFE: Is there any objection to SF-13?

18 MR. CROCKETT: No, Your Honor.

19 ALJ WOLFE: SF-13 is admitted.

20 (SF-13 was admitted.)

21 MR. MARKS: And I did move SF-12?

22 ALJ WOLFE: Yes. It's been admitted.

23 MR. MARKS: Thank you.

24 Q. BY MR. MARKS: Excuse me for a moment. We are  
25 moving on to another subject here.

1 Mr. Tompsett, what is treated effluent?

2 A. It's water that comes out the wastewater  
3 treatment plant after primary and tertiary treatment.

4 Q. Is that the same thing as reclaimed water?

5 A. For all practical purposes, yes.

6 Q. And I believe you agreed that there were  
7 different classes of reclaimed water, and I believe just  
8 to confirm -- let me just ask you again.

9 From the San Tan Water Treatment Plant, what  
10 class of reclaimed water does Johnson Utilities produce?

11 A. The plant is permitted for A-plus effluent.

12 Q. And how long has it been permitted for that?

13 A. I don't recall the exact date, but it's been a  
14 few years.

15 Q. And it began producing class A-plus reclaimed  
16 water in, I believe, March of 2006; is that correct?

17 A. Yes.

18 Q. And again, just to -- so the record is clear at  
19 this point in the transcript, can class A reclaimed water  
20 be used for irrigation purposes?

21 A. A-plus, yes?

22 Q. A-plus.

23 A. Yeah.

24 Q. And that includes golf course irrigation and  
25 common areas and homeowners associations?

1 A. Yes.

2 Q. How about for water features, like lakes or other  
3 things of that nature? Can it be used for those?

4 A. Yes.

5 Q. Does Johnson Utilities have a tariff to sell  
6 class A-plus reclaimed water?

7 A. It has a tariff for effluent sales, yes.

8 Q. And under that effluent tariff, you sell what  
9 ADEQ refers to as reclaimed water; is that correct?

10 A. Yes.

11 Q. Do you have your data responses with you? I'm  
12 thinking about in particular Swing First data request 1.1.

13 A. I don't have them up here with me, no.

14 Q. I think I can help you out.

15 Mr. Tompsett, do you have before you what has  
16 been marked as Exhibit SF-33?

17 A. Yes.

18 Q. Have you seen this before?

19 A. I'm sure I have. I don't recall specifically.

20 Q. What is the date of the request?

21 A. It's data request -- well, first data request  
22 from Swing First to Johnson Utilities.

23 Q. What is the date of the request?

24 A. Cover letter is dated August 8th.

25 Q. Of what year?



1 A. 2008.

2 Q. Would you read data request 1.1?

3 A. It says, "For each month during the period of  
4 2005 to present, please provide by treatment facility the  
5 amount of treated effluent generated within the Utility's  
6 Certificate of Convenience and Necessity."

7 MR. MARKS: I'll move SF-33 at this time.

8 ALJ WOLFE: Is there any objection?

9 MR. CROCKETT: I don't believe so, Your Honor.  
10 It appears to be a copy of what was sent, but unless I  
11 look at the copy that I received, I'm not 100 percent  
12 sure. But subject to check, we will agree.

13 ALJ WOLFE: Subject to check SF-33 is admitted.  
14 (SF-33 was admitted.)

15 THE WITNESS: Mr. Marks, I think I have two here  
16 if you are missing one.

17 Q. BY MR. MARKS: Okay. Good. Thank you.

18 Mr. Tompsett, do you have what has been marked as  
19 SF-34 in front of you?

20 A. Yes.

21 Q. And what is Exhibit SF-34?

22 A. It's -- the cover letter says it's the response  
23 1.1 through -- or data request 1.1 through 1.6 and the  
24 second page is the response to 1.1 only.

25 Q. What is the date of the response?

1 A. The cover letter is dated September 18th, '08.

2 Q. Could you compare the dates of Exhibit SF-33 and  
3 SF-34?

4 A. Okay.

5 Q. Would you agree that that is approximately  
6 40 days between the date of the request and the date of  
7 the response?

8 A. Without doing the math, approximately, yes.

9 Q. Do you know how long the procedural order in this  
10 case provided for discovery responses?

11 A. Not offhand, no.

12 Q. Would you accept subject to check it was ten  
13 calendar days?

14 A. Subject to check means I'm going to check it?

15 Q. Pardon?

16 A. I will check?

17 Q. Subject to check means, if you find out  
18 otherwise, you can revise your answer, at least as I  
19 understand it.

20 A. Okay.

21 Q. Did you object to the question?

22 A. No. We responded that the information was  
23 available at ADEQ.

24 Q. So you didn't provide the requested information,  
25 did you?

1 A. Not according to this, no.

2 Q. So you sent me to ADEQ to get the information?

3 A. Yes.

4 Q. Did your counsel review this response?

5 A. It appears to have come under Snell & Wilmer  
6 letterhead, so I assume Snell & Wilmer saw it.

7 MR. MARKS: I move SF-34, Your Honor.

8 ALJ WOLFE: Is there any objection?

9 MR. CROCKETT: No objection.

10 ALJ WOLFE: SF-34 is admitted.

11 (SF-34 was admitted.)

12 Q. BY MR. MARKS: Mr. Tompsett, do you have what is  
13 marked as Exhibit SF-35 in front of you?

14 A. Yes.

15 Q. And what is the date of that response?

16 A. I don't see a date on it.

17 Q. And I can do a better job identifying it.

18 Is it titled "Revised Response to 1.1, dated  
19 10/17/2008"?

20 A. Oh, yes, it is.

21 Q. And what did you do -- there is an objection,  
22 which I assume was provided by your counsel, and then  
23 there is a response.

24 And what does the response say?

25 A. The response is that, "Attached are the

1 self-monitoring report forms for Johnson Utilities' San  
2 Tan Water Reclamation Plant for each quarter during the  
3 test year, '07." It says, "Johnson Utilities is providing  
4 these documents without waiving the objection set forth  
5 above."

6 MR. MARKS: If I could approach, please.

7 ALJ WOLFE: Yes.

8 Q. BY MR. MARKS: And before I do, Mr. Tompsett, I  
9 didn't include the attachments to SF-35, and I'm going to  
10 provide you a copy of the entire response to review for  
11 the rest of my questions on this. But I will not move it  
12 as an exhibit, the complete document.

13 If you would take a moment to look that over.

14 MR. CROCKETT: Your Honor, if I could have a  
15 moment, I think we do have a copy of that response if we  
16 could get it to refer to.

17 ALJ WOLFE: Okay. Let's go off the record while  
18 you do that.

19 (Discussion off the record.)

20 ALJ WOLFE: We can go back on the record.

21 Q. BY MR. MARKS: Mr. Tompsett, what did you, in  
22 fact, attach to your revised response to data request 1.1?

23 A. It purports to have attached, and I assume what  
24 this pile is, is the self-monitoring report, SMRFs, for  
25 San Tan Wastewater Plant.

1 Q. How many pages were attached?

2 A. I don't mean to be smart, but quite a few.

3 Q. Would you accept subject to check that there are  
4 approximately 210 pages in that response?

5 A. Okay.

6 Q. Now, it was not part of your response -- I don't  
7 want to imply otherwise -- but I have tabbed with little  
8 yellow stickies four pages in the response.

9 Do you see those?

10 A. Yes, I have four stickies.

11 Q. And can you look at the first of those stickies  
12 at that page and tell me what it is. And identify what  
13 page number it is for benefit of your counsel and for the  
14 record.

15 A. I'm not seeing a page number on this at all.

16 Q. Should be down in the lower, I believe,  
17 right-hand corner. It's pretty small.

18 A. Oh, okay. It was ADEQ date stamp April 24th of  
19 '07, and it says page 42 of 55.

20 Q. And that would be 42 of 55 of the report for the  
21 first quarter of 2007; is that correct?

22 A. It looks to be, yes.

23 Q. And what information is contained on that page?

24 A. This is reporting the monthly average flow of the  
25 effluent, the reused water.

1 Q. And that is the information that I asked for in  
2 the data request 1.1, was it not, for those three months?

3 A. Well, not exactly. It -- what it's asking -- the  
4 way I understand the response, it's asking for all of the  
5 treated effluent generated within the utilities, and this  
6 is San Tan.

7 Q. You limited it to, first of all, 2007 in your  
8 response; correct?

9 A. Yes.

10 Q. And you provided the information only for the San  
11 Tan plant; correct?

12 A. Yes. That is the only water reclamation plant  
13 that can deliver effluent to Swing First Golf.

14 Q. And again, that page 42 of the first quarterly  
15 report for 2007 was everything that I needed to figure out  
16 the monthly treated effluent generated from that plant;  
17 correct?

18 A. Well, I'm not sure if you needed more or less. I  
19 mean, the original response was -- it's contained in the  
20 SMRFs, and we ultimately provided the quarterly SMRFs. I  
21 don't know if you were only looking for one page or if you  
22 were looking for everything.

23 Q. Well, doesn't the question say, for each month  
24 during the period of 2005 to the present, please provide  
25 by treatment facility the amount of treated effluent

1 generated within your CC&N?

2 A. Yes, that is what it says.

3 Q. Did I -- what are some of the other data that is  
4 contained in that response?

5 A. Some of the other things we have been talking  
6 about today: nitrates, water quality, overall flows,  
7 testing, a lot of the other items that you and I have  
8 discussed earlier today.

9 Q. Bacteria counts?

10 A. Yes.

11 Q. Inflows?

12 A. Yes.

13 Q. Did I ask for any of that information?

14 MR. CROCKETT: Your Honor, I would like to raise  
15 another objection.

16 The way this answer came about was a discussion  
17 between Mr. Marks and I to try to address the objection  
18 that we had raised, to not giving him the information.

19 The way it was -- what we offered to do was  
20 provide self-monitoring report forms, which is what we  
21 said we would do in the data request, which is exactly  
22 what we did.

23 These issues were raised by Mr. Marks previously  
24 when we had our oral argument on the motion to compel  
25 around these data requests. So we are covering ground

1 that has been covered before, and I don't know -- we are  
2 moving pretty slowly so far in the case.

3 ALJ WOLFE: Well, Mr. Crockett, did you ever  
4 provide a full response to data request 1.1?

5 MR. CROCKETT: We provided the information --  
6 well, yes, I think we did provide a full response -- well,  
7 not to -- I would have to go back and look.

8 ALJ WOLFE: Following the procedural conference  
9 that we had on the motion to compel, did you provide more  
10 information?

11 MR. CROCKETT: Following the procedural  
12 conference we complied exactly with what Your Honor had  
13 ruled in that procedural conference with respect to  
14 providing information.

15 ALJ WOLFE: Okay. And your objection to -- I  
16 don't remember what the last question was, but what was  
17 your objection based on, on what ground?

18 MR. CROCKETT: Well, I think the objection is  
19 based on relevance in this proceeding today. We are  
20 talking about a discovery dispute that occurred along the  
21 way and resolution of that discovery dispute.

22 ALJ WOLFE: I'm not -- I don't know that it was  
23 resolved, so I'm going to overrule the objection and allow  
24 Mr. Marks to continue and make his point, hopefully  
25 quickly.



1 MR. MARKS: I'm trying, Your Honor.

2 Q. BY MR. MARKS: And let's see if we can shortcut  
3 this a little bit.

4 I have tabbed three other pages out of the  
5 210-page response, and if you could look at those  
6 quickly -- or as long as you need -- and verify that those  
7 are a page -- each of those is a page 42 from one of the  
8 2007 quarterly reports.

9 A. Yes, they are all -- page 42 and 55 are the  
10 quarterlies for the year.

11 Q. So between those four pages that provides the  
12 average monthly flow generated -- or the average monthly  
13 generation of reclaimed class A water for the San Tan  
14 Water Treatment Facility; correct?

15 A. Yes, it is the monthly summary, but what you  
16 didn't tab was the other -- this isn't numbered -- is the  
17 daily readings that compile that number.

18 Q. Did I ask for the daily readings in the data  
19 request?

20 A. Not specifically, no. My understanding is that  
21 you and counsel had discussed this, and this is what we  
22 were to produce. This is what we produced.

23 Q. So we agree of the 210 pages, I obviously needed  
24 four of those pages in order to get the information I  
25 needed; correct?

1 MR. CROCKETT: I'm going to object to that. I  
2 think this misstates Mr. Tompsett's testimony. I think  
3 his testimony was he didn't know exactly what Mr. Marks  
4 needed or wanted.

5 ALJ WOLFE: Overruled.

6 You may answer the question.

7 THE WITNESS: It provides the information  
8 provided -- or you asked for specifically in 1.1, but it  
9 also provides other information that I don't know if you  
10 needed or didn't need. It fully answers the question, I  
11 think.

12 Q. BY MR. MARKS: So to get to those relevant pages,  
13 I had to sort through 210 pages of other data; is that  
14 correct?

15 A. I don't know how you got to it. That sounds like  
16 that is the end result.

17 Q. Well, you provided me 210 pages. I needed four  
18 pages; is that correct?

19 A. That's what you are saying now, yes.

20 MR. MARKS: And, for the record, Your Honor, this  
21 was not part of the discovery dispute we had earlier in  
22 this case. If you look at the date of this response, this  
23 predates the procedural conference.

24 After I -- and since Mr. Crockett has testified,  
25 and you indulged him slightly, I will take the same

1 privilege here -- I took the time and trouble to wade  
2 through this document to come up with the relevant  
3 information, so I didn't want to burden you with  
4 discussing this at a procedural conference.

5 That is all I have on the attachment. If could I  
6 have that back. Thank you.

7 And I would move SF-35.

8 ALJ WOLFE: Is there any objection to SF-35?

9 MR. CROCKETT: No objection.

10 ALJ WOLFE: SF-35 is admitted.

11 (SF-35 was admitted.)

12 Q. BY MR. MARKS: Mr. Tompsett, I handed you two  
13 exhibits, one marked as SF-15 and other is marked as  
14 SF-16.

15 Do you have those?

16 A. Yes.

17 Q. Exhibit SF-15 I provided a table for 2007 of  
18 average daily reclaimed water flows from the Utility's San  
19 Tan Water Reclamation Plant for 2007, and I asked you to  
20 confirm those average daily reclaimed water flows.

21 Do you see that?

22 A. Yes.

23 Q. And I said that -- I said, if you disagree with  
24 any of these figures, which were taken from the ADEQ  
25 self-monitoring report that you previously provided,

1 please provide any changes with an explanation.

2 Do you see that?

3 A. Yes.

4 Q. And how did you respond to this?

5 A. We objected to going through the process of  
6 verifying or checking the math in this table.

7 Q. So you had the opportunity to confirm whether I  
8 had gotten that information out of that 210-page report  
9 right -- or response; correct?

10 A. I'm sorry. Could you repeat that?

11 Q. You had the opportunity to confirm whether I had  
12 gotten the correct information out of that 210-page  
13 response to DR 1.1; isn't that right?

14 A. Yeah. If you used the information for 1.1 to  
15 generate the table, yes.

16 MR. CROCKETT: And, Your Honor, I would note,  
17 just to clarify the record, the data request 1.1 was a  
18 data request in the rate case, whereas this data request  
19 3.2 is in the complaint proceeding, which is a different  
20 docket.

21 ALJ WOLFE: Yes.

22 Q. BY MR. MARKS: Now, how long would it have taken  
23 you, Mr. Tompsett, to check this information?

24 A. I don't know. I wouldn't -- I personally  
25 wouldn't have done it. I would have asked someone to

1 tally it up.

2 Q. It would have been relatively straightforward for  
3 somebody to go to those page 42s and confirm whether the  
4 numbers -- first of all, whether I had gotten the right  
5 numbers and whether I had also computed the averages  
6 correctly; is that correct?

7 A. Well, I don't -- I don't see that the 3.2 even  
8 says that. This is a summary of the data request 1.1 in  
9 the other case.

10 Q. It does say they are taken from the ADEQ  
11 self-monitoring reports, does it not?

12 A. Oh, at the bottom, yes, it does.

13 Q. And I misspoke. I will start over with that  
14 question.

15 How long would it have taken to confirm that the  
16 average daily flows in column 2 were correctly taken from  
17 the 210 pages that you provided me in response to rate  
18 case DR 1.1?

19 A. It would have taken somebody a few hours, I'm  
20 sure.

21 Q. To look at four pages 42 and check the numbers?

22 A. Yeah. I don't -- I wouldn't have done it  
23 personally, so I don't know how long it would have taken  
24 someone to put it together and verify.

25 Q. And how long would it have taken to take those

1 daily flows and check for the number of days in the month  
2 to see if the monthly total was correct?

3 A. Say it again. I'm sorry. I'm sorry. Say it  
4 again.

5 Q. How long would it have taken somebody to take  
6 those average daily flows and apply them by the number of  
7 days in the month to see if the monthly total was correct?

8 A. You would have to assume the daily flow number  
9 was correct and just multiply it out by the number of  
10 days. So it wouldn't have taken too long.

11 As I said, I think the objection was to check on  
12 the math.

13 Q. Understood.

14 I would like you to turn to SF-16 --

15 MR. MARKS: First all, I would move SF-15.

16 ALJ WOLFE: Is there any objection?

17 MR. CROCKETT: Well, subject to I don't  
18 understand the relevance of SF-15, I would -- it's a data  
19 request provided in the complaint proceeding and not in  
20 this rate case proceeding, so I don't know what the  
21 relevance of it in the docket is.

22 ALJ WOLFE: Mr. Marks?

23 MR. MARKS: Your Honor, the monthly -- and we  
24 will get to this -- but the monthly flows on SF-15 are  
25 carried forward into the surrebuttal testimony of

1 Mr. Ashton in the table that he provided of monthly flows  
2 and uses by customers. So I'm going to the basis of the  
3 information that he provided.

4 ALJ WOLFE: Mr. Crockett?

5 MR. CROCKETT: My response would be to have him  
6 bring them through Mr. Ashton instead of through  
7 Mr. Tompsett who didn't check the math or review this  
8 document.

9 MR. MARKS: And I think to be clear, Your Honor,  
10 I'm interested in the response. I'm not interested -- I'm  
11 not asking them to verify the numbers. They refuse to  
12 verify the numbers.

13 I'm just asking to get this in. The question was  
14 asked and that the opportunity was provided to respond,  
15 which the Utility did not avail itself.

16 ALJ WOLFE: Because the parties' testimony is  
17 based on these responses, I will admit it.

18 (SF-15 is admitted.)

19 Q. BY MR. MARKS: Mr. Tompsett, do you have Exhibit  
20 SF-16?

21 A. Yes.

22 Q. And this is another data request, and this  
23 again -- I know Mr. Crockett will say so, so I will beat  
24 him to it -- this is from the complaint proceeding. And  
25 it says, "Please provide the average daily reclaimed water

1 flows from Utility's San Tan Water Reclamation Plant for  
2 months of December 2004 through December 2006 and  
3 January 2008 through the present. If Utility alleges that  
4 it would be burdensome to provide this data directly, then  
5 provide the relevant pages from the ADEQ self-monitoring  
6 report for the years in question. For example, the data  
7 in the table above" -- and that is 3.2, which is now  
8 admitted as SF-15 -- "was taken from the four quarterly  
9 summaries of the reclaimed water included in Utility's  
10 revised response to data request 1.1."

11 Do you see that?

12 A. Yes.

13 Q. What was your response?

14 A. We responded by attaching.

15 Q. Could you read your actual response, please.

16 A. Oh, I'm sorry. It says, "Attached please find  
17 the relevant pages from the ADEQ self-monitoring report  
18 forms that were filed for San Tan Water Reclamation Plant  
19 for the period of 4/01/06 through 12/31/06 and for the  
20 period of 1/01/08 to 12/31/08." And it says, "The San Tan  
21 plant was not operating prior to 4/1/2006."

22 Q. All right. And what, in fact, did you provide me  
23 then? What is attached?

24 A. What is attached is -- are the daily monitoring  
25 reports and quarterly basis forms. So you have the --



1 let's see here.

2 You have the second quarter of -- I'm losing it  
3 here. Excuse me.

4 It looks like the second quarter of '06, the  
5 third quarter of '06, fourth quarter of '06, and then we  
6 jumped to '08 -- 2008, and you have first quarter, second  
7 quarter, third quarter and fourth quarter on a daily  
8 basis, which I believe is responsive to the first  
9 sentence.

10 Q. First sentence says, "Please provide the average  
11 daily reclaimed water flows."

12 Do you see where the average daily is included in  
13 that response?

14 A. Well, you don't -- well, yes. Well, this is the  
15 daily flow.

16 Q. Right, but I didn't ask for daily flow, did I? I  
17 asked for average daily flow in the form that was included  
18 in your response to data request 1.1. Didn't I?

19 A. The data request does say it. I misread it  
20 again. It says, "Please provide the average daily  
21 reclaimed water flows."

22 Q. And you did not provide?

23 A. We provided the daily water flows.

24 Q. Did your counsel review this response?

25 A. I just misread it again, so I don't know. This

1 is what we responded or provided. I assume you got this  
2 from our counsel.

3 Q. Now, from this information it's possible to  
4 compute the monthly average, isn't it?

5 A. Yes.

6 Q. I'm sorry. The monthly total?

7 A. Monthly total.

8 Q. And from the monthly total then one could compute  
9 the monthly average daily flow; correct?

10 A. Yes.

11 Q. Now, you are an engineer, I understand?

12 A. Yes.

13 Q. How would one go about doing that?

14 A. Add them all up and divide by the number of days.

15 Q. All right. So in order for me to get the  
16 information that I requested, I had to add up the  
17 individual daily flows for each of the nine months of 2006  
18 and 12 months of 2008, divide all of those by the number  
19 of days in the relevant month to make that calculation;  
20 correct?

21 A. That sounds correct, yes.

22 Q. That is a fairly time-consuming endeavor;  
23 wouldn't you agree?

24 A. You were asking me about time frames before. I  
25 don't know how long that would take.

1 Q. Well, before we were talking about looking at 12  
2 data points and seeing if they were multiplied correctly  
3 by the number of days in a month; correct?

4 A. I'm sorry. Which exhibit was that?

5 Q. That was 15.

6 A. Oh, okay. Yes.

7 Q. This is a lot more work than that, isn't it? We  
8 are talking somewhere in the neighborhood of 550 to 600  
9 individual pieces of data here; isn't that correct?

10 A. Probably close to that, but again --

11 Q. And computing seven separate totals, adding up  
12 for each of the months -- I'm sorry -- for each of the  
13 months would be nine totals for 2006 and 12 totals for  
14 2008; is that correct?

15 A. Yes.

16 Q. And then for each of those totals you would then  
17 have to go back and divide that by the number of days,  
18 correct, in that month?

19 A. That sounds like the correct math.

20 And, again, I don't know how long it would take.  
21 I think earlier I responded I wouldn't do it. I wouldn't  
22 do the math. I assume you didn't do the math.

23 Q. You assume wrong.

24 Did you think you were being clever providing  
25 this information?

1 MR. CROCKETT: Objection; argumentative.

2 ALJ WOLFE: Sustained.

3 Q. BY MR. MARKS: Were you trying to prevent a party  
4 in this case from learning how much effluent was being  
5 produced from the San Tan Water Treatment Plant?

6 A. No, I think -- I mean, when you provided SF-16 to  
7 me just now or earlier today when I reviewed this, I  
8 misread it again. I read it as daily reclaimed water  
9 flows, and that is what we provided. I may have misread  
10 it when we initially responded.

11 MR. MARKS: I move SF-16 at this time, Your  
12 Honor.

13 ALJ WOLFE: Is there any objection to SF-16?

14 (No response.)

15 ALJ WOLFE: SF-16 is admitted.

16 (SF-16 was admitted.)

17 MR. MARKS: Now, Mr. Crockett can maybe help me  
18 with this a little bit. I did not see, Mr. Crockett, any  
19 sort of formal response that was associated with this,  
20 only the attached table, which was an Excel 2007  
21 spreadsheet; is that correct?

22 I'm asking Mr. Crockett.

23 MR. CROCKETT: I'm sorry, Mr. Marks. Would you  
24 ask the question again?

25 MR. MARKS: Mr. Crockett, I went through my

1 records. I don't see a formal data request that goes  
2 along with this table that you provided to me.

3 MR. CROCKETT: My recollection is that this  
4 information was provided to you in response to the  
5 procedural conference that we had on the motion to compel,  
6 but I need to verify that. I would have to go back to my  
7 e-mail to see the context in which this was provided.

8 MR. MARKS: I again went through my files,  
9 Mr. Crockett. I don't have anything with this information  
10 other than your e-mail. So I will proceed on that basis  
11 with Mr. Tompsett at this point. And you can, of course,  
12 check.

13 THE WITNESS: Your Honor, can I take a quick  
14 break? Don't I have to do that before a question comes  
15 out?

16 MR. MARKS: I don't have any objection, Your  
17 Honor.

18 ALJ WOLFE: Okay.

19 MR. MARKS: It might even help them clarify  
20 whatever -- I'm sure Mr. Crockett didn't develop this, and  
21 perhaps they can stipulate to it.

22 ALJ WOLFE: Okay. Before we take a break, how  
23 many more lines of questioning do you have for this  
24 witness?

25 MR. MARKS: Your Honor, this line of questioning

1 could easily take me well past 5:00 o'clock tonight before  
2 I turn to another topic.

3 ALJ WOLFE: Okay. And, Mr. Mannato, do you have  
4 questions for this witness?

5 MR. MANNATO: I do, Your Honor. They are not as  
6 extensive as Mr. Marks, however.

7 I was going to ask the Court if it would consider  
8 changing the batting order here so I could cross-examine  
9 Mr. Tompsett tomorrow.

10 ALJ WOLFE: Well, Mr. Tompsett, if he doesn't  
11 finish -- if the cross-examination doesn't finish today,  
12 he will be coming back tomorrow.

13 And, Mr. Pozefsky, you have questions for this  
14 witness as well?

15 MR. POZEFSKY: I do, but they are not as lengthy  
16 as this one.

17 ALJ WOLFE: And the attorneys seem to be really  
18 eager to point that out.

19 Staff, do you have some?

20 MS. SCOTT: I will point it out as well. Ours  
21 are very brief.

22 ALJ WOLFE: Okay. I think what we will do is we  
23 will break for the day because there is no way we will  
24 finish with Mr. Tompsett today anyway, and we might as  
25 well, instead of taking a break and coming back, we will

1 go off the record for the day and we will resume with this  
2 question tomorrow morning at 9:30.

3 Are there any other procedural issue the parties  
4 would like to raise before we break today?

5 Mr. Pozefsky?

6 MR. MARKS: Just a quick one, Your Honor.

7 We need to get Mr. Moore on tomorrow.

8 ALJ WOLFE: And we will make sure that Mr. Moore  
9 gets on tomorrow.

10 MR. MARKS: Thank you, Your Honor.

11 MR. MANNATO: Can we leave our materials here or  
12 shall we clean up?

13 ALJ WOLFE: You can leave your materials here,  
14 but I did make a request about trash. But your  
15 materials -- the room is locked but cleaning staff does  
16 come in, so just so you know that. No one else will be  
17 using the room before tomorrow at 9:30, and we will see  
18 you tomorrow. Thank you.

19 (TIME NOTED: 4:28 p.m.)

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1 STATE OF ARIZONA. )  
2 COUNTY OF MARICOPA ) ss.

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I, KATE E. BAUMGARTH, RPR, Certified Reporter  
8 No. 50582, for the State of Arizona, do hereby certify  
9 that the foregoing printed pages constitute a full, and  
10 accurate transcript of the proceedings had in the  
11 foregoing matter, all done to the best of my skill and  
12 ability.

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WITNESS my hand this 24th day of April, 2009.

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